

EXHIBIT 18

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, LP,)
)Case No.
Debtor.)19-34054-SGJ-11
)
HIGHLAND CAPITAL MANAGEMENT, LP,)
)
Plaintiff,)
)
vs.)Advisory Proceeding No.
)21-03004
NEXPOINT ADVISORS, LP; JAMES)
DONDERO; NANCY DONDERO; and THE)
DUGABOY INVESTMENT TRUST,)
)
Defendants.)

REMOTE DEPOSITION OF
DUSTIN NORRIS
December 1, 2021

DUSTIN NORRIS, produced as a witness at the
instance of the Highland Capital Management, was
duly sworn and deposed in the above-styled and
numbered cause on December 1, 2021, from
10:01 a.m. CST to 3:25 p.m. CST, stenographically
reported, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record.

Job Number: 203362
Reported by: Rebecca A. Graziano, CSR, RMR, CRR
Texas CSR 9306
California CSR 14407
Illinois CSR 084.004659

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<p>1 A P P E A R A N C E S</p> <p>2 (all attendees appearing via remote videoconference)</p> <p>3</p> <p>4 REPRESENTING HIGHLAND CAPITAL MANAGEMENT, LP:</p> <p>5 John Morris, Esq.</p> <p>6 Hayley Winograd, Esq.</p> <p>7 PACHULSKI STANG ZIEHL & JONES LLP</p> <p>8 780 Third Avenue</p> <p>9 New York City, New York 10017</p> <p>10 REPRESENTING NEXPOINT ADVISORS, LP:</p> <p>11 Davor Rukavina, Esq.</p> <p>12 MUNSCH HARDT KOPF & HARR, PC</p> <p>13 500 North Akard Street</p> <p>14 Dallas, Texas 75201</p> <p>15 REPRESENTING JAMES DONDERO, NANCY DONDERO, HCRE,</p> <p>16 and HCMS:</p> <p>17 Michael Aigen, Esq.</p> <p>18 STINSON LLP</p> <p>19 3102 Oak Lawn Avenue</p> <p>20 Dallas, Texas 75219</p> <p>21 ALSO PRESENT:</p> <p>22 La Asia Canty, Paralegal,</p> <p>23 Pachulski Stang Ziehl & Jones</p> <p>24</p> <p>25</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 EXAMINATION BY MR. MORRIS..... 5</p> <p>4</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Exhibit 185 Plaintiff's Third Amended Notice of</p> <p>9 Rule 30(b)(6) Deposition to</p> <p>10 Highland Capital Management Fund</p> <p>11 Advisors..... 7</p> <p>12</p> <p>13</p> <p>14 PREVIOUSLY MARKED EXHIBITS</p> <p>15 NUMBER DESCRIPTION PAGE</p> <p>16 Exhibit 1 Complaint for (I) Breach of</p> <p>17 Contract and (II) Turnover of</p> <p>18 Property of the Debtor's Estate..... 38</p> <p>19 Exhibit 5 Defendant's Original Answer..... 29</p> <p>20 Exhibit 13 Defendant's Amended Answer..... 158</p> <p>21 Exhibit 36 Email Chain; Bates D-HCMFA290880</p> <p>22 through 290883..... 87</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 PREVIOUSLY MARKED EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 45 Highland Capital Management Fund</p> <p>4 Advisors, LP, Consolidated</p> <p>5 Financial Statements and</p> <p>6 Supplemental Information, 12/31/18;</p> <p>7 Bates D-CNL-002273 through 002296.... 46</p> <p>8 Exhibit 59 Supplemental 15(c) Info Request;</p> <p>9 Bates HCMFAS 000025 through 000031... 71</p> <p>10 Exhibit 147 BBVA Compass Bank Statement, Date</p> <p>11 Ending 5/31/19 (no Bates range)..... 51</p> <p>12 Exhibit 182 Memo Dated 5/28/19 (no Bates range).. 119</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 PROCEEDINGS</p> <p>2 (On the record at 10:01 a.m. CST)</p> <p>3 (Witness duly sworn.)</p> <p>4 DUSTIN NORRIS,</p> <p>5 being first duly sworn, testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. MORRIS:</p> <p>8 Q Good morning, Mr. Norris. As you may</p> <p>9 recall, my name is John Morris. I'm an attorney</p> <p>10 at Pachulski Stang Ziehl & Jones, and we're</p> <p>11 counsel to the reorganized debtor known as</p> <p>12 Highland Capital Management, LP, and we're here</p> <p>13 for your deposition today.</p> <p>14 Do you understand that?</p> <p>15 A Yes, sir.</p> <p>16 Q And do you understand that you're being</p> <p>17 deposed today in your capacity as what's called a</p> <p>18 Rule 30(b)(6) witness on behalf of Highland</p> <p>19 Capital Management Fund Advisors, LP?</p> <p>20 A I do.</p> <p>21 Q Can we refer to Highland Capital</p> <p>22 Management Fund Advisors, LP, as "HCMFA"?</p> <p>23 A Yes, that works.</p> <p>24 Q And can we refer to Highland Capital</p> <p>25 Management, LP, as either "Highland" or "HCMLP"?</p>

<p style="text-align: right;">Page 6</p> <p>1 Dustin Norris</p> <p>2 A Yes.</p> <p>3 Q Okay. Are you aware that your answers</p> <p>4 today will bind HCMFA?</p> <p>5 A Generally, yes.</p> <p>6 Q Okay. Have you seen the notice that was</p> <p>7 served by Highland on HCMFA in connection with</p> <p>8 this deposition?</p> <p>9 A I have.</p> <p>10 Q Okay. I've – I've examined you before;</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q Okay. So the rules are the exact same,</p> <p>14 and they are very simple. If I ask a question, I</p> <p>15 would ask you to refrain from answering until I've</p> <p>16 completed my question; is that fair?</p> <p>17 A Yes, it is. Thank you.</p> <p>18 Q And if I begin a question or respond</p> <p>19 before you've completed your answer, will you let</p> <p>20 me know that?</p> <p>21 A Yes.</p> <p>22 Q We're going to be putting documents up on</p> <p>23 the screen from time to time today. If at any</p> <p>24 time you believe you need to see other portions of</p> <p>25 the document in order to give complete and</p>	<p style="text-align: right;">Page 7</p> <p>1 Dustin Norris</p> <p>2 accurate answers, will you let me know that?</p> <p>3 A Yes.</p> <p>4 Q If you need a break at any time, will you</p> <p>5 let me know that as well?</p> <p>6 A I will.</p> <p>7 Q Okay.</p> <p>8 MR. MORRIS: I would ask my</p> <p>9 colleague, Ms. Canty, to put up on the</p> <p>10 screen the Rule 30(b)(6) deposition</p> <p>11 notice.</p> <p>12 (Norris Exhibit 185 marked.)</p> <p>13 (Reporter discussion off the record.)</p> <p>14 MR. MORRIS: Okay. Asia, what</p> <p>15 exhibit number should we put on this</p> <p>16 document?</p> <p>17 MS. CANTY: 185.</p> <p>18 MR. MORRIS: Okay. Davor and</p> <p>19 Michael, this will be Exhibit 185.</p> <p>20 And if we can scroll down and show</p> <p>21 it to Mr. Norris.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Do you see that this is the plaintiff's</p> <p>24 third amended notice of deposition for today?</p> <p>25 MR. RUKAVINA: And just so you</p>
<p style="text-align: right;">Page 8</p> <p>1 Dustin Norris</p> <p>2 know, John and Dustin, I did not send this</p> <p>3 to you, Dustin. All that it does is</p> <p>4 changes the time of today's deposition.</p> <p>5 It's identical to the last one that you</p> <p>6 did get.</p> <p>7 THE WITNESS: Okay. And I have the</p> <p>8 last one here with me as well.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Okay. So there's no – I'll represent to</p> <p>11 you that there's no difference between the one</p> <p>12 that's on the screen and the one you have except</p> <p>13 that the one on the screen says "Third Amended</p> <p>14 Notice," and it was scheduled for 9:00 today.</p> <p>15 It's scheduled for 10:00 today, the – the time</p> <p>16 that we're beginning.</p> <p>17 Do you have any other documents in</p> <p>18 front of you other than the deposition notice?</p> <p>19 A I do.</p> <p>20 Q What – what other documents do you have</p> <p>21 before you?</p> <p>22 A Yeah. I have the original complaint I</p> <p>23 believe it's called – forgive me if I call them</p> <p>24 the wrong items –</p> <p>25 Q Uh-huh.</p>	<p style="text-align: right;">Page 9</p> <p>1 Dustin Norris</p> <p>2 A – but the original complaint from HCMLP.</p> <p>3 I have the original answer response from HCMFA. I</p> <p>4 have the amended response. I have the declaration</p> <p>5 from Mr. Sauter. I have copies of the promissory</p> <p>6 notes. I have the shared services agreement. I</p> <p>7 have a – incumbency certificates, which will help</p> <p>8 me respond to one of your questions in the</p> <p>9 30(b)(6) notice. And I have a board to the</p> <p>10 memo [sic] regarding NAV error, and I have the</p> <p>11 "Defendant's Second Motion for Leave to Amend</p> <p>12 Answer and Brief in Support Thereof" that was</p> <p>13 filed yesterday.</p> <p>14 So a number of documents that – and I</p> <p>15 also have up on my screen your exhibits that I</p> <p>16 believe we'll be going through in one of the –</p> <p>17 let me check here – Topic Number 5. So I have</p> <p>18 open, you know, a 650-page document that was filed</p> <p>19 in Docket 35 on May 24th, I believe, is the</p> <p>20 correct document. So those are the materials that</p> <p>21 I have.</p> <p>22 Q Excellent. I appreciate that.</p> <p>23 So you've seen – you've seen at least</p> <p>24 the plaintiff's second amended notice of</p> <p>25 Rule 30(b)(6) deposition before today. Do I have</p>

<p>Page 10</p> <p>1 Dustin Norris</p> <p>2 that right?</p> <p>3 A That's correct.</p> <p>4 Q And you have that with you; right?</p> <p>5 A I do.</p> <p>6 Q Okay. Are you prepared to testify on</p> <p>7 behalf of HCMFA today on – in connection with</p> <p>8 each of the topics in the deposition notice?</p> <p>9 A Yes, I am.</p> <p>10 Q All right.</p> <p>11 MR. MORRIS: Let's just, for the</p> <p>12 record, scroll down to make sure that the</p> <p>13 topics are the same as the – the one that</p> <p>14 Mr. Norris has in front of him.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q Do you see the first five topics on the</p> <p>17 screen?</p> <p>18 A I do.</p> <p>19 Q All right. Can you confirm that they're</p> <p>20 the same topics that you have in the second</p> <p>21 amended notice of deposition?</p> <p>22 A Yes. I'm looking now.</p> <p>23 Yes, they all are the same.</p> <p>24 Q Okay. And if we can continue to scroll</p> <p>25 down, you see Topics 6, 7, and 8 up on the screen,</p>	<p>Page 11</p> <p>1 Dustin Norris</p> <p>2 and 9. Are they the same as what you have?</p> <p>3 A Can you scroll down for 9?</p> <p>4 Q Uh-huh.</p> <p>5 A They look to be the same, yes.</p> <p>6 Q Okay. And let's just look at the last</p> <p>7 few. How about 10 through 14? Are they the same</p> <p>8 as the topics that are in your second amended</p> <p>9 notice?</p> <p>10 A They look to be the same, yes.</p> <p>11 Q Okay. And did you do anything to prepare</p> <p>12 for today's deposition?</p> <p>13 A I did.</p> <p>14 Q What did you do?</p> <p>15 A I reviewed all of the pleadings. I</p> <p>16 reviewed all of the – the documents that were, I</p> <p>17 believe, responsive to – to help me to respond to</p> <p>18 this, look through your exhibits. I had met with</p> <p>19 Mr. Rukavina as counsel. I met and spoke with</p> <p>20 Mr. Dondero. I spoke with Jason Post.</p> <p>21 I spoke with – I reviewed my</p> <p>22 documents internally and emails, things that I</p> <p>23 might have had, confirmed with our IT group that</p> <p>24 they have provided all documents responsive to</p> <p>25 your discovery requests.</p>
<p>Page 12</p> <p>1 Dustin Norris</p> <p>2 I reviewed the depositions of</p> <p>3 Mr. Seery, of Frank Waterhouse, Dave Klos, and</p> <p>4 Kristin Hendrix. I met in person and by Zoom with</p> <p>5 Mr. Rukavina over the last few weeks, and – so</p> <p>6 that – that's the general – you know, there may</p> <p>7 have been other things, but that's the general</p> <p>8 overview of the things that I did –</p> <p>9 Q I appreciate –</p> <p>10 A – to understand the company's position.</p> <p>11 Q I appreciate that.</p> <p>12 So just focusing in on the people that</p> <p>13 you spoke with in connection with your</p> <p>14 preparation, one was Davor; right?</p> <p>15 A Correct.</p> <p>16 And I – I may have – I don't know if</p> <p>17 I said it or not, but DC Sauter as well I also</p> <p>18 spoke with.</p> <p>19 Q Okay. So the other people are DC Sauter,</p> <p>20 Jason Post, and Mr. Dondero. Do I have that</p> <p>21 right?</p> <p>22 A Correct.</p> <p>23 Q Did you speak with Frank Waterhouse at</p> <p>24 all?</p> <p>25 A No, I did not.</p>	<p>Page 13</p> <p>1 Dustin Norris</p> <p>2 Q Is there any particular reason you didn't</p> <p>3 speak with Mr. Waterhouse?</p> <p>4 A Yes.</p> <p>5 Q And what – why didn't you speak with</p> <p>6 Mr. Waterhouse?</p> <p>7 A My – my – yeah, sorry.</p> <p>8 My understanding is his counsel did</p> <p>9 not allow us to speak with him regarding this,</p> <p>10 because HCMLP had sued him for various things, and</p> <p>11 so we weren't allowed to talk with him.</p> <p>12 You'll – you'll note that DC, earlier</p> <p>13 on, had spoken to him. I believe that was back in</p> <p>14 April, if you look back and I'd refer you to</p> <p>15 Mr. Sauter's declaration. But in preparation for</p> <p>16 this, we did not speak with him. We needed to</p> <p>17 wait for his deposition based on his attorney's</p> <p>18 instructions.</p> <p>19 Q How many times did you speak with</p> <p>20 Mr. Dondero about today's deposition?</p> <p>21 A Multiple times over the last few weeks.</p> <p>22 Q And was Mr. Rukavina present for those</p> <p>23 discussions?</p> <p>24 A He was not.</p> <p>25 Q Can you tell me what you discussed with</p>

<p style="text-align: right;">Page 14</p> <p>1 Dustin Norris</p> <p>2 Mr. Dondero about today's deposition?</p> <p>3 A Yeah. Discussed with him general view of</p> <p>4 the company from his perspective. We discussed</p> <p>5 particularly around – and we'll get into more</p> <p>6 details on this – but around the purpose and</p> <p>7 transfer of cash, the seven-and-a-half million</p> <p>8 dollars. And I guess there were two transactions.</p> <p>9 Discussed with him what he remembered</p> <p>10 in discussions with Frank Waterhouse when he</p> <p>11 instructed him to transfer the cash, and any</p> <p>12 recollection he had regarding the notes or the –</p> <p>13 the – the promissory notes.</p> <p>14 And so those were the general topics.</p> <p>15 And we did talk about –</p> <p>16 Q Did Mr. –</p> <p>17 A Sorry. Go ahead.</p> <p>18 Q Yeah, I don't mean to step on your words.</p> <p>19 A No, no.</p> <p>20 We talked about the NAV error, we</p> <p>21 talked about responsibility for the NAV error and</p> <p>22 those aspects as well.</p> <p>23 Q Did – did Mr. Dondero tell you when he</p> <p>24 first learned of the existence of the notes?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 15</p> <p>1 Dustin Norris</p> <p>2 Q Did you ask him in connection with your</p> <p>3 preparation for today's deposition?</p> <p>4 A What I did ask, I asked him – I said,</p> <p>5 "Did you tell Frank Waterhouse that there should</p> <p>6 be – that this should be a loan?"</p> <p>7 And his response was, "No, that I</p> <p>8 never told Frank it should be a loan, and Frank</p> <p>9 never asked if it should be a loan." And that the</p> <p>10 intent – and the reason for the transfer was</p> <p>11 compensation for the NAV error.</p> <p>12 And so that was – he did not know –</p> <p>13 and if I – if I remember correctly, looking at</p> <p>14 his deposition, I believe he did not know about</p> <p>15 the notes at that time and found out about them</p> <p>16 much later.</p> <p>17 Q I know, and I'm trying to understand from</p> <p>18 you if you can tell me, as HCMFA's 30(b)(6)</p> <p>19 representative, whether you can share with me when</p> <p>20 Mr. Dondero first learned of the existence of the</p> <p>21 notes.</p> <p>22 A It – it would have been – I believe, if</p> <p>23 my understanding is correct, it would have been</p> <p>24 after they were demanded.</p> <p>25 Q After they were?</p>
<p style="text-align: right;">Page 16</p> <p>1 Dustin Norris</p> <p>2 A Demanded.</p> <p>3 Q Okay. How about your conversations with</p> <p>4 Mr. Post? Did the subject of when he learned</p> <p>5 about the existence of the notes come up?</p> <p>6 A No. That was not – a discussion with</p> <p>7 Jason Post – Post – talking with Jason was more</p> <p>8 around the NAV error, the events surrounding the</p> <p>9 NAV error, facts and circumstances around the NAV</p> <p>10 error.</p> <p>11 Q Okay. And were your discussions with</p> <p>12 Mr. Sauter limited to the investigation that he</p> <p>13 undertook earlier this year that's reflected in</p> <p>14 his declaration?</p> <p>15 A I would say it's not limited to that.</p> <p>16 Q What other topics did you discuss with</p> <p>17 Mr. Sauter beyond the investigation that he</p> <p>18 undertook that's reflected in his declaration?</p> <p>19 MR. RUKAVINA: And I would just</p> <p>20 caution you, Dustin, that to the extent</p> <p>21 that you and Mr. Sauter discussed factual</p> <p>22 matters, that's fair game.</p> <p>23 But as far as if you discussed</p> <p>24 litigation strategy, that's not fair game.</p> <p>25 So be careful with your answer, please,</p>	<p style="text-align: right;">Page 17</p> <p>1 Dustin Norris</p> <p>2 and tell Mr. Morris what you can and can't</p> <p>3 answer.</p> <p>4 THE WITNESS: Yeah.</p> <p>5 So early on with Mr. Sauter,</p> <p>6 discussions were around if I had any</p> <p>7 knowledge of the note, if he had any</p> <p>8 knowledge of the note, trying to discover</p> <p>9 what the notes were, what they were</p> <p>10 related to, and neither of us had</p> <p>11 knowledge related to notes.</p> <p>12 And then discussions around more</p> <p>13 generally – I'm trying to think back.</p> <p>14 There were many discussions with</p> <p>15 Mr. Sauter on the topic.</p> <p>16 General facts and circumstances of</p> <p>17 what he was learning from his</p> <p>18 investigation in which – all of which I</p> <p>19 would refer you to his declaration.</p> <p>20 And then subsequent, talking with</p> <p>21 him regarding the – I'm trying to</p> <p>22 recollect the – the key components.</p> <p>23 But it was general overview of –</p> <p>24 of the notes and NAV error and the</p> <p>25 process. He wasn't here during much of</p>

<p>Page 18</p> <p>1 Dustin Norris</p> <p>2 that time period or involved, and so we</p> <p>3 were talking together based on what he was</p> <p>4 doing.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Who are you employed by today?</p> <p>7 A NexPoint Advisors.</p> <p>8 Q Do you hold any position or title with</p> <p>9 HCMFA?</p> <p>10 A I do.</p> <p>11 Q And what's your position or title with</p> <p>12 HCMFA?</p> <p>13 A Executive vice president is my officer</p> <p>14 role.</p> <p>15 Q And when did you become an officer of</p> <p>16 HCMFA?</p> <p>17 A So I – I was originally secretary – and</p> <p>18 I can't remember if I was assistant secretary, but</p> <p>19 I've been involved with HCMFA since 2012. I don't</p> <p>20 know if I was added as an assistant secretary at</p> <p>21 that time; but for many – for several years, I've</p> <p>22 been an officer of HCMFA.</p> <p>23 Q And you were an officer in 2018 and 2019;</p> <p>24 is that right?</p> <p>25 A Correct. I was secretary in 2018, and –</p>	<p>Page 19</p> <p>1 Dustin Norris</p> <p>2 I'm looking at the incumbency certificates here –</p> <p>3 and in 2019 in April became executive vice</p> <p>4 president. So from January to – January 2018 to</p> <p>5 April 2019, I was secretary and then became</p> <p>6 executive vice president.</p> <p>7 Q When did you first learn of the existence</p> <p>8 of the notes?</p> <p>9 A So it was after they were demanded, and it</p> <p>10 was – so I believe the demand came in in early</p> <p>11 2020 – 2021. So January-ish 2021.</p> <p>12 Q Do you have any role or any title with any</p> <p>13 of the funds that are managed by either NexPoint</p> <p>14 or HCMFA?</p> <p>15 A I do.</p> <p>16 Q Can you describe those roles or titles for</p> <p>17 me, please?</p> <p>18 A Yeah. I'm – I'm the executive vice</p> <p>19 president of the funds, and my role more broadly</p> <p>20 is I am the head of distribution and chief product</p> <p>21 strategist. And so in that role, I lead the sales</p> <p>22 and business development and marketing for the</p> <p>23 funds, more broadly.</p> <p>24 Q And what is your title with NexPoint</p> <p>25 Advisors, LP?</p>
<p>Page 20</p> <p>1 Dustin Norris</p> <p>2 A I am executive vice president in the</p> <p>3 officer capacity, and my role is – as an employee</p> <p>4 is head of distribution and chief product</p> <p>5 strategist.</p> <p>6 Q Okay. So just to summarize, you're the</p> <p>7 executive vice president of NexPoint Advisors, LP;</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 Q And that's an officer position; correct?</p> <p>11 A It is.</p> <p>12 Q And when did you attain that title?</p> <p>13 A Probably – I don't have the incumbency</p> <p>14 certificates, but it was probably the same time as</p> <p>15 HCMFA.</p> <p>16 Q Is it fair to say that it was sometime</p> <p>17 before January 1st, 2018?</p> <p>18 A No.</p> <p>19 Q Can you give me an estimate of when that</p> <p>20 was? Feel free –</p> <p>21 A Yeah. The time – the timeline for HCMFA</p> <p>22 was April 2019. I was secretary before that, and</p> <p>23 I don't recall if NexPoint Advisors changed at the</p> <p>24 same time.</p> <p>25 Q Okay. Can I refer to HCMFA and NexPoint</p>	<p>Page 21</p> <p>1 Dustin Norris</p> <p>2 Advisors, LP, together as "the advisers"?</p> <p>3 A That's fine.</p> <p>4 Q Okay. So is it fair to say that you were</p> <p>5 the executive vice president, which was an officer</p> <p>6 position, for each of the advisers as of April</p> <p>7 2019?</p> <p>8 A Yes.</p> <p>9 Q Okay. And –</p> <p>10 A I believe that's correct.</p> <p>11 Q And you also serve as the executive vice</p> <p>12 president of the funds that each of the advisers</p> <p>13 manages. Do I have that right?</p> <p>14 A Yes. Currently.</p> <p>15 Q And have you held the –</p> <p>16 A Yes, currently.</p> <p>17 Q And when did you become the executive vice</p> <p>18 president of the funds?</p> <p>19 A I don't remember the exact date, if that</p> <p>20 was around the same time, but I was the secretary</p> <p>21 before that and assistant secretary before that,</p> <p>22 dating back to 2012.</p> <p>23 Q So you've been – is it fair to say that</p> <p>24 you've been an officer of the funds managed by the</p> <p>25 advisers since at least 2013?</p>

<p style="text-align: right;">Page 22</p> <p>1 Dustin Norris</p> <p>2 A I believe so. I'd have to go back and</p> <p>3 look for sure, but I believe. There may have been</p> <p>4 periods of time where I was not, but yes.</p> <p>5 Q Okay. Were any of those periods of time</p> <p>6 when you were not, at any point since 2018 to the</p> <p>7 present?</p> <p>8 A I don't believe so.</p> <p>9 Q Okay. So to the best of your</p> <p>10 recollection, you've served as an executive vice</p> <p>11 president of each of the funds managed by the</p> <p>12 advisers since at least the beginning of 2018; is</p> <p>13 that fair?</p> <p>14 A No. That's – that's different than my</p> <p>15 prior testimony that – I was secretary until</p> <p>16 April –</p> <p>17 Q I apologize. Let me restate the question.</p> <p>18 You've been an officer of – of the</p> <p>19 funds managed by the advisers on a continuous</p> <p>20 basis since at least the beginning of 2018; fair?</p> <p>21 A I believe that's correct, yes.</p> <p>22 Q Thank you for the question – for – for</p> <p>23 the correction.</p> <p>24 So as I think you pointed out earlier,</p> <p>25 one of the topics on the 30(b)(6) notice is the</p>	<p style="text-align: right;">Page 23</p> <p>1 Dustin Norris</p> <p>2 identity of officers, directors, and employees of</p> <p>3 HCMFA?</p> <p>4 A Uh-huh.</p> <p>5 Q Do you want to take a look at that topic</p> <p>6 on the document that you have in front of you?</p> <p>7 A Yes.</p> <p>8 Q Okay.</p> <p>9 A That is – which topic?</p> <p>10 Q 13.</p> <p>11 A 13, yes.</p> <p>12 Q Okay. So let's focus on 13 for a moment.</p> <p>13 Can you – can you identify for me</p> <p>14 HCMFA's officers from January 1st, 2018, to the</p> <p>15 present –</p> <p>16 A Yes.</p> <p>17 Q – including names and titles?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 A So from January 1st, 2018 – and I don't</p> <p>21 have – I – I'm assuming that the dates that I</p> <p>22 have on the incumbency certificates are complete,</p> <p>23 but I'm not certain, and – if there was one in</p> <p>24 between, but I'm assuming this is – that the</p> <p>25 dates I have changing is – is effective when they</p>
<p style="text-align: right;">Page 24</p> <p>1 Dustin Norris</p> <p>2 changed.</p> <p>3 But Brad Ross was president of HCMFA</p> <p>4 from January 1st, 2018, until, I believe,</p> <p>5 February 2018 – sorry – yeah, until</p> <p>6 February 2018.</p> <p>7 In that same time period, Brad Ross,</p> <p>8 president; Trey Parker, executive vice president;</p> <p>9 Frank Waterhouse, treasurer; Dustin Norris,</p> <p>10 secretary.</p> <p>11 And effective 26th of February –</p> <p>12 Q I apologize. What is Mr. Parker's title?</p> <p>13 A Executive vice president.</p> <p>14 Q Thank you.</p> <p>15 A And beginning February 26th, 2018, Trey</p> <p>16 Parker, executive vice president; Frank</p> <p>17 Waterhouse, treasurer; and Dustin Norris,</p> <p>18 secretary; and no longer president, Brad Ross.</p> <p>19 There's no president on the lineup.</p> <p>20 So continuing on, April 11th, 2019,</p> <p>21 Dustin Norris, executive vice president; Frank</p> <p>22 Waterhouse, treasurer; Lauren Thedford, secretary.</p> <p>23 Q And Trey Parker was no longer an officer</p> <p>24 as of that time?</p> <p>25 A He was no longer an officer.</p>	<p style="text-align: right;">Page 25</p> <p>1 Dustin Norris</p> <p>2 Q Okay.</p> <p>3 A And February 18th, 2021, Dustin Norris,</p> <p>4 executive vice president; Frank Waterhouse,</p> <p>5 treasurer; Brian Mitts, assistant treasurer; David</p> <p>6 Willmore, secretary. So Lauren Thedford, no</p> <p>7 longer secretary.</p> <p>8 Q And have there been any changes since</p> <p>9 February 2021?</p> <p>10 A Yes. You have April 8, 2021, Dustin</p> <p>11 Norris, executive president; Frank Waterhouse,</p> <p>12 treasurer; Will Mabry, assistant treasurer; and</p> <p>13 Stephanie Vitiello, secretary.</p> <p>14 Again, I – I don't have – this is</p> <p>15 based on what was provided to me with effective</p> <p>16 dates. I don't know if there was any that were</p> <p>17 missing, if that's complete, but I – I believe</p> <p>18 those are accurate.</p> <p>19 Q Is it fair to say that you're relying on</p> <p>20 exclusively on the incumbency certificates to</p> <p>21 identify the officers of HCMFA since January 1st,</p> <p>22 2018?</p> <p>23 A For this purpose, yes.</p> <p>24 Q Do you have any other information that you</p> <p>25 can share with me regarding the identity of any</p>

<p style="text-align: right;">Page 26</p> <p>1 Dustin Norris</p> <p>2 officers of HCMFA since January 1st, 2018?</p> <p>3 A I don't, no.</p> <p>4 Q Okay. Can you identify for me HCMFA's</p> <p>5 direct and indirect owners since January 1st,</p> <p>6 2018?</p> <p>7 A I can, yes. Generally Jim Dondero and</p> <p>8 Mark Okada are the indirect owners through trusts.</p> <p>9 They own approximately two-thirds, Jim Dondero, a</p> <p>10 little less than a third, Mark Okada, with a</p> <p>11 general partner that is – that owns 1 percent.</p> <p>12 Q And who is the general partner?</p> <p>13 A It's a Strand entity that I believe is</p> <p>14 owned 100 percent by Mr. Dondero.</p> <p>15 Q So Mr. Dondero controls the general</p> <p>16 partner –</p> <p>17 A Right.</p> <p>18 Q – of HCMFA?</p> <p>19 A Correct, and owns approximately two-thirds</p> <p>20 of the equity.</p> <p>21 Q And is that a controlling interest to the</p> <p>22 best of your knowledge?</p> <p>23 A Yes, I believe so.</p> <p>24 Q Okay. Does HCMFA have any directors?</p> <p>25 A It does not. It has a sole director</p>	<p style="text-align: right;">Page 27</p> <p>1 Dustin Norris</p> <p>2 through the general partners. So HCMFA does</p> <p>3 not – Strand – whatever the Strand entity does,</p> <p>4 Jim Dondero is the sole director.</p> <p>5 Q Okay. And what about employees? Does</p> <p>6 HCMFA have any employees?</p> <p>7 A It does have some front-office employees,</p> <p>8 trading professionals.</p> <p>9 Q Are there any employees who perform any</p> <p>10 services other than trading services?</p> <p>11 A Trading in front-office investment</p> <p>12 analysts, portfolio managers, generally that's</p> <p>13 been the structure with HCMFA, is they held –</p> <p>14 they had employees that performed front-office</p> <p>15 functions, and we, as I believe you're aware,</p> <p>16 outsourced the back-office accounting, compliance,</p> <p>17 and legal services to Highland Capital Management,</p> <p>18 LP, during this time period.</p> <p>19 Q Let's go to Topic Number 12.</p> <p>20 A Okay.</p> <p>21 Q And Topic Number 12 asks for a witness who</p> <p>22 can testify as to all communications that HCMFA</p> <p>23 "made in the bankruptcy case concerning the notes,</p> <p>24 including any pleadings, court filing, or</p> <p>25 argument."</p>
<p style="text-align: right;">Page 28</p> <p>1 Dustin Norris</p> <p>2 Do you see that?</p> <p>3 A I do.</p> <p>4 Q Are you prepared to answer questions on</p> <p>5 that topic?</p> <p>6 A I am.</p> <p>7 Q All right. You're aware that obviously</p> <p>8 Highland has commenced an adversary proceeding</p> <p>9 against HCMFA to collect on two promissory notes;</p> <p>10 right?</p> <p>11 A I am, yes, and I believe this right here</p> <p>12 is the complaint filed January 22nd.</p> <p>13 Q Okay. And you're aware that the notes</p> <p>14 that are the subject of the lawsuit were dated</p> <p>15 May 2nd and May 3rd, 2019, respectively; right?</p> <p>16 A Sorry. Can you repeat that?</p> <p>17 Q You're aware that the notes that are the</p> <p>18 subject of the lawsuit are dated May 2nd and</p> <p>19 May 3rd, 2019, respectively; correct?</p> <p>20 A Yes. The notes that are attached to the</p> <p>21 complaint, May 2nd and May 3rd.</p> <p>22 Q Okay. And can we refer to those two</p> <p>23 notes – those two promissory notes for the rest</p> <p>24 of this deposition collectively as "the notes"?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And you're aware that after</p> <p>3 Highland commenced this action, HCMFA filed its</p> <p>4 original answer; correct?</p> <p>5 A That's correct.</p> <p>6 Q Okay. And Topic Number 1 on your list, in</p> <p>7 fact, is the answer, correct, the original answer?</p> <p>8 A That's correct. It's Topic Number 1.</p> <p>9 MR. MORRIS: Okay. Can we put</p> <p>10 Deposition Exhibit 5 up on the screen?</p> <p>11 We're going to look at the original</p> <p>12 answer.</p> <p>13 (Exhibit 5 tendered.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q And, again, feel free to let me know if</p> <p>16 there's any portion of this document that you need</p> <p>17 to see. But looking at the first page – and</p> <p>18 perhaps we can continue to scroll through it – is</p> <p>19 this the original answer that was filed on behalf</p> <p>20 of HCMFA on March 1st, 2021?</p> <p>21 A I'll take your representation that it is.</p> <p>22 It looks to be, yeah.</p> <p>23 Q Okay.</p> <p>24 A I was not involved in the filing of it,</p> <p>25 but...</p>

<p>Page 30</p> <p>1 Dustin Norris</p> <p>2 Q Okay. Is the copy that you have with you</p> <p>3 dated March 1st, 2021?</p> <p>4 A Yes, it is.</p> <p>5 Q And if you can turn to Page 6 of 7, does</p> <p>6 it appear to be the exact same as what appears on</p> <p>7 the screen, showing the March 1st, 2021, date?</p> <p>8 A It does.</p> <p>9 Q And do you refer to the March 1st, 2021,</p> <p>10 date, as "the answer date"?</p> <p>11 A Yes.</p> <p>12 Q Okay. HCMFA did not assert any</p> <p>13 affirmative defenses in this pleading; correct?</p> <p>14 A That's my understanding.</p> <p>15 Q Okay. And HCMFA had full access to you as</p> <p>16 of March 1st, 2021; correct?</p> <p>17 A Yes.</p> <p>18 Q And HCMFA had full access to Mr. Dondero</p> <p>19 as of March 1st, 2021; correct?</p> <p>20 A In the term "full access," they could have</p> <p>21 talked to him, yes.</p> <p>22 Q Right. And there was no restriction from</p> <p>23 the bankruptcy court or otherwise on HCMFA's</p> <p>24 ability to communicate with Mr. Dondero that you</p> <p>25 know of; correct?</p>	<p>Page 31</p> <p>1 Dustin Norris</p> <p>2 A None that I know of.</p> <p>3 Q And there was no restriction or limitation</p> <p>4 on HCMFA's ability to speak with you at or prior</p> <p>5 to March 1st, 2021; correct?</p> <p>6 A That's correct.</p> <p>7 Q How about Ms. Thedford? Are you aware of</p> <p>8 any restriction or limitation on HCMFA's ability</p> <p>9 to speak with her prior to March 1st, 2021?</p> <p>10 A Yes.</p> <p>11 Q Okay. And what restriction was that?</p> <p>12 A Yeah. So she was part of the Highland</p> <p>13 legal team. She was an employee of HCMLP. And</p> <p>14 during this time period, we had outsourced our</p> <p>15 legal and compliance functions to them. And if –</p> <p>16 I would refer you to Mr. Sauter's declaration and</p> <p>17 the attachments and schedules. There's a very</p> <p>18 strict direction from Mr. Seery that</p> <p>19 individuals – particularly on the legal team –</p> <p>20 could not work on anything that would be inimical</p> <p>21 to the debtor.</p> <p>22 Q Okay.</p> <p>23 A And so Ms. Thedford, on multiple</p> <p>24 occasions, told us she was unable to work on</p> <p>25 things, and that began back in fall of 2000 –</p>
<p>Page 32</p> <p>1 Dustin Norris</p> <p>2 fall of 2020 – late summer 2020, actually. And</p> <p>3 so she was not accessible for things like this.</p> <p>4 Q How about Mr. Post? Do you know who</p> <p>5 Mr. Post was employed by in 2018 and 2019?</p> <p>6 A 2018 and '19, he was employed by Highland</p> <p>7 Capital Management, LP.</p> <p>8 Q Do you know whether, in your conversations</p> <p>9 with him, does he have any personal knowledge</p> <p>10 regarding the NAV error?</p> <p>11 A Yes.</p> <p>12 Q Was he involved in any of the issues</p> <p>13 surrounding the NAV error?</p> <p>14 A He was knowledgeable – as he was</p> <p>15 chief – chief compliance officer of the retail</p> <p>16 advisers at that time, and interacted with the</p> <p>17 HCMLP employees and the board regarding the NAV</p> <p>18 error, he also – in your schedules, you'll notice</p> <p>19 in one of the memos, he participated in calls with</p> <p>20 the SEC, and so he was – he was involved in the</p> <p>21 process of the NAV error and understood and worked</p> <p>22 with the other HCMLP employees, which naturally</p> <p>23 they would. We had outsourced valuation services</p> <p>24 to HCMLP. We had outsourced legal and compliance</p> <p>25 to HCMLP, and as such, that was all part of what</p>	<p>Page 33</p> <p>1 Dustin Norris</p> <p>2 they were working on.</p> <p>3 Q Did – did – were there any restrictions</p> <p>4 or limitations on HCMFA's ability to speak with</p> <p>5 Mr. Post prior to March 1st, 2021?</p> <p>6 A So once – so Jason – one important</p> <p>7 component here is Jason Post did leave the debtor,</p> <p>8 and working with Mr. Seery, I believe, to then</p> <p>9 leave and become an employee of NexPoint Advisors,</p> <p>10 and that was at the request of our retail board,</p> <p>11 as there were restrictions on Mr. Post at that</p> <p>12 time.</p> <p>13 And as chief compliance officer of the</p> <p>14 funds, the board had become very uncomfortable</p> <p>15 that they had restrictions on Mr. Post. And so it</p> <p>16 was in everybody's interest to allow him to become</p> <p>17 an employee of NexPoint Advisors, and so that was</p> <p>18 late 2020, I believe. I don't know the exact</p> <p>19 date. And at that time, there were certain things</p> <p>20 that Jason was able to then help the adviser with,</p> <p>21 but there were still restrictions. And he had</p> <p>22 limited access to his prior data. He left the</p> <p>23 debtor, but he didn't have – I believe he had</p> <p>24 restrictions on what he could access in the</p> <p>25 information.</p>

<p>Page 34</p> <p>1 Dustin Norris</p> <p>2 Q Okay. But it is fair to say that between</p> <p>3 January 21st, 2021, the day that the complaint was</p> <p>4 filed, and March 1st, 2021, the date that HCMFA</p> <p>5 filed its original answer, HCMFA had complete and</p> <p>6 unfettered access to you, to Mr. Dondero, and</p> <p>7 Mr. Post; correct?</p> <p>8 A Again, the complete and unfettered access</p> <p>9 on the Jason Post aspect, they could have talked</p> <p>10 to him. I'm not sure if there were any other</p> <p>11 restrictions related to what he had or information</p> <p>12 he had or based on his prior role of the debtor,</p> <p>13 he was restricted on what he could or couldn't</p> <p>14 talk about, if he had any lease agreement. I'm</p> <p>15 not certain on that. But, yes, we could talk</p> <p>16 to – or HCMFA could talk to Mr. Post.</p> <p>17 Q Okay. And the topics that you just raised</p> <p>18 are speculation on your part; correct?</p> <p>19 A It is.</p> <p>20 Q You're not aware of any restriction of –</p> <p>21 you don't have any knowledge of any restriction or</p> <p>22 limitation placed on HCMFA in respect of its</p> <p>23 ability to communicate with Mr. Post between</p> <p>24 January 21st, 2021, and March 1st, 2021; correct?</p> <p>25 A Based on my personal knowledge, no. There</p>	<p>Page 35</p> <p>1 Dustin Norris</p> <p>2 could have been something, but –</p> <p>3 Q Okay. I'm just asking about your</p> <p>4 knowledge, not what could have been.</p> <p>5 All right. So we're going to use</p> <p>6 March 1st, 2021, as the answer date.</p> <p>7 Are you aware of any document that</p> <p>8 HCMFA filed with the bankruptcy court prior to the</p> <p>9 answer date that concerns or relates in any way to</p> <p>10 the notes?</p> <p>11 A I'm thinking if I'm aware.</p> <p>12 Not that I'm aware of.</p> <p>13 Q Are you aware – withdrawn.</p> <p>14 Do you know what a "pleading" is, if I</p> <p>15 use that phrase?</p> <p>16 A I believe so. These are the answers that</p> <p>17 we gave. The first answer, the amended answer,</p> <p>18 and the second amended answer, that – I believe</p> <p>19 those are the two pleadings. Is that correct?</p> <p>20 Q You know what? I think my first question</p> <p>21 was broad enough, because I just used the word</p> <p>22 "document," so I'm going to let that sit.</p> <p>23 Are you aware of any argument that</p> <p>24 anybody ever made on behalf of HCMFA prior to the</p> <p>25 answer date that concerned or related to any of</p>
<p>Page 36</p> <p>1 Dustin Norris</p> <p>2 the notes?</p> <p>3 A And you mean an argument to the Court?</p> <p>4 Q Yes.</p> <p>5 A Not that I'm aware of.</p> <p>6 Q Okay. Are you aware of any statement of</p> <p>7 any kind that was made to the bankruptcy court</p> <p>8 prior to the answer date that concerned or related</p> <p>9 in any way to the notes?</p> <p>10 A Not that I can remember. But there's</p> <p>11 obviously been a lot of documents with the Court,</p> <p>12 but not that I'm aware of.</p> <p>13 Q Right. But you – did you do anything to</p> <p>14 prepare yourself to answer questions on Topic 12?</p> <p>15 A Yes.</p> <p>16 Q And do you believe that you're able to</p> <p>17 competently answer my questions relating to</p> <p>18 Topic 12 as HCMFA's 30(b)(6) witness?</p> <p>19 A I am. But I guess in this regard you're</p> <p>20 asking to my knowledge. And so, I guess, that –</p> <p>21 are you asking my personal knowledge or as my</p> <p>22 knowledge as a representative of the company?</p> <p>23 Q All right. I appreciate that.</p> <p>24 I am only examining you today in your</p> <p>25 capacity as a 30(b)(6) witness.</p>	<p>Page 37</p> <p>1 Dustin Norris</p> <p>2 A Okay. That makes sense. Okay.</p> <p>3 Q And so if I use the phrase "you," just as</p> <p>4 we did in the deposition notice, I'm really</p> <p>5 referring to HCMFA; is that fair?</p> <p>6 A That's fair.</p> <p>7 Q Okay. So let me just ask the questions</p> <p>8 again with that clarification.</p> <p>9 Are you aware, in your capacity as the</p> <p>10 30(b)(6) witness today, of any document that was</p> <p>11 ever filed on behalf of HCMFA prior to the answer</p> <p>12 date that concerns or relates to the notes?</p> <p>13 A No.</p> <p>14 Q Are you aware, in your capacity as the</p> <p>15 HCMFA 30(b)(6) witness, of any argument that was</p> <p>16 ever made to the Court prior to the answer date</p> <p>17 that concerns or relates in any way to the notes?</p> <p>18 A No.</p> <p>19 Q Are you aware of – again, when I use the</p> <p>20 phrase "you," I'm referring to HCMFA, just to</p> <p>21 shorten these questions a little bit.</p> <p>22 Are you aware of any statement that</p> <p>23 was ever made on your behalf to the bankruptcy</p> <p>24 court prior to the answer date that concerns or</p> <p>25 relates in any way to the notes?</p>

<p>Page 38</p> <p>1 Dustin Norris</p> <p>2 A Not that I recall.</p> <p>3 Q Okay. When did HCMFA first learn of the</p> <p>4 existence of the notes?</p> <p>5 A So HCMFA's position is that they learned</p> <p>6 of them when they were demanded, or after they</p> <p>7 were demanded. I don't even know that when we</p> <p>8 received – or who they were sent to, but it was</p> <p>9 after they were demanded.</p> <p>10 Q Okay. And do you recall when they were</p> <p>11 demanded?</p> <p>12 A I don't have the exact date. If you could</p> <p>13 remind me or show a document, that might be</p> <p>14 helpful. I don't know if you have the demand, or</p> <p>15 if that's one of the documents, but I don't</p> <p>16 remember the specific date.</p> <p>17 MR. MORRIS: Can we put Exhibit 1</p> <p>18 up on the screen?</p> <p>19 It's actually the complaint – the</p> <p>20 original complaint, sir.</p> <p>21 (Exhibit 1 tendered.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q If you go to Exhibit 3, do you see there's</p> <p>24 a demand letter there?</p> <p>25 A Yes.</p>	<p>Page 39</p> <p>1 Dustin Norris</p> <p>2 Q And you've seen that before; right?</p> <p>3 A I have.</p> <p>4 Q Okay. And are you – do you see that it</p> <p>5 was sent to Mr. Waterhouse?</p> <p>6 A Yes.</p> <p>7 Q And Mr. Waterhouse was the treasurer of</p> <p>8 HCMFA on December 3rd, 2020; correct?</p> <p>9 A Correct.</p> <p>10 Q Okay. So is it fair to say that HCMFA</p> <p>11 knew of the existence of the notes on</p> <p>12 December 3rd, 2020?</p> <p>13 A It's safe to say that Frank Waterhouse</p> <p>14 received this. I'm not sure the date exactly</p> <p>15 when – when the company became aware. Frank,</p> <p>16 yes, is an officer. He's also – the irony here,</p> <p>17 he's CFO of the debtor who is demanding this, so</p> <p>18 he's demanding it from himself. I know it's</p> <p>19 coming from – from who is sending it, but at this</p> <p>20 time, I don't know when Mr. Dondero or other</p> <p>21 officers became aware of it. Sometime after</p> <p>22 December 3rd.</p> <p>23 Q Okay. Do you know if HCMFA ever responded</p> <p>24 to this demand letter prior to the time the</p> <p>25 complaint was filed on January 21st, 2021?</p>
<p>Page 40</p> <p>1 Dustin Norris</p> <p>2 A I don't believe they did.</p> <p>3 Q So it's fair to say that nobody on behalf</p> <p>4 of HCMFA ever told any representative of Highland</p> <p>5 that it was previously unaware of the existence of</p> <p>6 the notes?</p> <p>7 A Sorry. Can you repeat that one more time?</p> <p>8 Q HCMFA never responded to this letter prior</p> <p>9 to the commencement of the lawsuit; right?</p> <p>10 A Not to my knowledge, didn't respond to</p> <p>11 HCMLP on this.</p> <p>12 Q Is there a reason why they didn't reach</p> <p>13 out to Highland to let Highland know that it</p> <p>14 disputed the existence of these notes?</p> <p>15 A I don't know if there's a reason, but I do</p> <p>16 know, during this time period, you'll recall,</p> <p>17 December and January, leading up to the actual</p> <p>18 demand – or the initial complaint, there was a</p> <p>19 lot going on. We were almost in daily depositions</p> <p>20 and court hearings. There was a hearing</p> <p>21 injunction handed out against Jim. There was a</p> <p>22 restraining order. There – TRO. There were</p> <p>23 lawsuits against the advisers. And so there was a</p> <p>24 lot going on, and I think this was put back in the</p> <p>25 priority line.</p>	<p>Page 41</p> <p>1 Dustin Norris</p> <p>2 Again, all of the compliance and legal</p> <p>3 functions at this time, December 2020, were being</p> <p>4 outsourced to HCMLP, and we were told they were</p> <p>5 unable to help with anything that was inimical to</p> <p>6 the debtor. And so there were no employees of</p> <p>7 HCMFA that were legal compliance professionals,</p> <p>8 and so this – this was – I guess – this is my</p> <p>9 speculation – was put in the back of the line, or</p> <p>10 further back from the actual litigation that they</p> <p>11 were defending or working against the daily</p> <p>12 depositions and coordinating.</p> <p>13 Q Do you have any reason to believe, as you</p> <p>14 sit here right now, that Mr. Waterhouse did not</p> <p>15 receive this demand letter on or about</p> <p>16 December 3rd, 2020?</p> <p>17 A I don't know. I don't have any reason to</p> <p>18 believe that, but I don't know.</p> <p>19 Q Okay.</p> <p>20 A And I don't recall what he testified to in</p> <p>21 regard to receiving the demand, but we see here it</p> <p>22 was sent to him. We can assume it got sent to</p> <p>23 him.</p> <p>24 Q Okay. Let me ask the question again, and</p> <p>25 I would appreciate you listening carefully to my</p>

<p>Page 42</p> <p>1 Dustin Norris</p> <p>2 question.</p> <p>3 As HCMFA's 30(b)(6) witness today,</p> <p>4 does HCMFA contend that this letter was not</p> <p>5 received by Mr. Waterhouse on or about</p> <p>6 December 3rd, 2020?</p> <p>7 MR. RUKAVINA: Well, that's not our</p> <p>8 contention. We agree that it was received</p> <p>9 on or about that date.</p> <p>10 MR. MORRIS: Okay.</p> <p>11 THE WITNESS: Yeah. That's –</p> <p>12 yeah.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Okay. HCMFA actually knew about the notes</p> <p>15 just weeks after they were signed; correct?</p> <p>16 MR. RUKAVINA: Objection; form.</p> <p>17 THE WITNESS: So the debtor</p> <p>18 employees who created the notes knew about</p> <p>19 them, but it was not knowledge of HCMFA.</p> <p>20 Those were all Highland Capital</p> <p>21 Management, LP, employees.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q So it's your testimony that HCMFA had no</p> <p>24 knowledge of the existence of the notes in</p> <p>25 June 2019; is that correct?</p>	<p>Page 43</p> <p>1 Dustin Norris</p> <p>2 A June 2019.</p> <p>3 Correct.</p> <p>4 Q As the executive vice president of HCMFA,</p> <p>5 have you ever reviewed HCMFA's audited financial</p> <p>6 statements?</p> <p>7 A I have not.</p> <p>8 Q Is there anybody on behalf of HCMFA who is</p> <p>9 charged with the responsibility of reading HCMFA's</p> <p>10 audited financial statements?</p> <p>11 A Yeah. We – again, the key here is we</p> <p>12 outsourced finance, accounting, back-office</p> <p>13 functions. It includes financial statement</p> <p>14 preparation. The treasurer of HCMFA is an HCMLP</p> <p>15 employee, Frank Waterhouse, at that time, and at</p> <p>16 all times that we're talking about. And so with</p> <p>17 we – and Frank is a professional, and his team</p> <p>18 are professionals, right? We outsource to an</p> <p>19 accounting group to prepare and oversee, work with</p> <p>20 the auditors in preparation of those financials.</p> <p>21 And so they were tasked with that. And we relied</p> <p>22 on them. And there was not a specialist during</p> <p>23 this time period that did that.</p> <p>24 Q Does Frank Waterhouse have any</p> <p>25 responsibility, as the treasurer of HCMFA, to make</p>
<p>Page 44</p> <p>1 Dustin Norris</p> <p>2 sure that HCMFA's audited financial statements are</p> <p>3 true, accurate, and reliable?</p> <p>4 A Him and his team, yeah. We actually –</p> <p>5 that's what we rely on them for.</p> <p>6 Q And did you rely on him not only in his</p> <p>7 capacity as an employee of Highland, but in his</p> <p>8 capacity as the treasurer of HCMFA?</p> <p>9 A Yeah, he was – let's take the first –</p> <p>10 as a – in his capacity under the shared services</p> <p>11 agreement, okay, doing accounting, books and</p> <p>12 records, audited – audit support, yes, we relied</p> <p>13 on him in that capacity. And he also, as an HCMLP</p> <p>14 employee, served as a treasurer of HCMFA. In that</p> <p>15 role, we would expect him to oversee the</p> <p>16 financials.</p> <p>17 MR. MORRIS: Okay. And move to</p> <p>18 strike.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q And I'm going to ask you very</p> <p>21 specifically: As HCMFA's representative today,</p> <p>22 did Frank Waterhouse have a duty as the treasurer</p> <p>23 of HCMFA to make sure that HCMFA's audited</p> <p>24 financial statements were true and accurate?</p> <p>25 A That – very specific from the treasurer</p>	<p>Page 45</p> <p>1 Dustin Norris</p> <p>2 role, I would say the treasurer role was to</p> <p>3 oversee the financial aspects of the advisers.</p> <p>4 Q And was one of those aspects HCMFA's</p> <p>5 audited financial statements?</p> <p>6 A As – yeah. And he was – again, I'll</p> <p>7 reiterate, he was the CFO of Highland who was</p> <p>8 tasked with creating the financial statements for</p> <p>9 the advisers.</p> <p>10 MR. MORRIS: Okay. I'm again going</p> <p>11 to move to strike.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q I'm not asking about his role as CFO of</p> <p>14 Highland. I'm limiting it strictly to his role as</p> <p>15 the treasurer of HCMFA.</p> <p>16 A And I don't have –</p> <p>17 Q Did Frank – let me ask my question.</p> <p>18 Is any officer of HCMFA responsible</p> <p>19 for making sure that HCMFA's audited financial</p> <p>20 statements are true and accurate?</p> <p>21 A I don't know, but I would assume – and I</p> <p>22 don't want to make assumptions here as the</p> <p>23 representative – but I would assume that the</p> <p>24 treasurer would have that role.</p> <p>25 Q Okay. And what is your assumption based</p>

<p>Page 46</p> <p>1 Dustin Norris</p> <p>2 on?</p> <p>3 A Based on the understanding of what a</p> <p>4 treasurer role would be. But I – I don't have</p> <p>5 any – I don't have any knowledge, I'm not</p> <p>6 representing that we have any roles and</p> <p>7 responsibilities or defined procedures that the</p> <p>8 treasurer does this, that, or the other.</p> <p>9 Q Okay. Have you – as you sit here right</p> <p>10 now, have you ever seen HCMFA's audited financial</p> <p>11 statements for the period ending December 31st,</p> <p>12 2018?</p> <p>13 A I saw them in the materials that were</p> <p>14 provided in your schedules, I believe.</p> <p>15 Q Okay. Let's –</p> <p>16 A That was the first time.</p> <p>17 Q Let's take a quick look at it.</p> <p>18 MR. MORRIS: If we could put up on</p> <p>19 the screen the document that's been marked</p> <p>20 Exhibit 45.</p> <p>21 (Exhibit 45 tendered.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Okay. And do you see that this is the</p> <p>24 first page of HCMFA's audited financial statements</p> <p>25 for the period ending December 31st, 2018?</p>	<p>Page 47</p> <p>1 Dustin Norris</p> <p>2 A I do.</p> <p>3 MR. MORRIS: Okay. And if we could</p> <p>4 just scroll, I think, to the third page.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Do you see that it's signed by</p> <p>7 PricewaterhouseCoopers on June 3rd, 2019?</p> <p>8 A I see that the audit opinion is signed by</p> <p>9 them, yes.</p> <p>10 Q Correct. And – and you're aware that</p> <p>11 PricewaterhouseCoopers was the outside auditor</p> <p>12 retained by HCMFA to conduct the audit of HCMFA's</p> <p>13 financial statements; correct?</p> <p>14 A Given that they gave an opinion, yes.</p> <p>15 Q Okay. And you have no reason to believe</p> <p>16 that the document that's up on the screen is</p> <p>17 anything other than HCMFA's audited financial</p> <p>18 statements for the period ending December 31st,</p> <p>19 2018, do you?</p> <p>20 And we're happy – I'm happy to scroll</p> <p>21 through whatever you need to see.</p> <p>22 A Yeah. And there they're distinguishing –</p> <p>23 you have an audit opinion and having audited</p> <p>24 financials, I assume that you have all that is</p> <p>25 here. You showed me the first page of the</p>
<p>Page 48</p> <p>1 Dustin Norris</p> <p>2 financials, which –</p> <p>3 Q Yeah. Yeah. Let's –</p> <p>4 A So I'm assuming that's the –</p> <p>5 Q Let's scroll down just a little bit.</p> <p>6 You can see that the next page is</p> <p>7 HCMFA's balance sheet. Do you see that?</p> <p>8 A I do.</p> <p>9 Q Okay.</p> <p>10 MR. MORRIS: Can we go to</p> <p>11 "Subsequent Events"? I think it's</p> <p>12 Page 17.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Have you seen this page of HCMFA's audited</p> <p>15 financial statements before?</p> <p>16 A Just in preparation for this.</p> <p>17 Q Do you understand that in the "Subsequent</p> <p>18 Events" section, the notes are described in the</p> <p>19 audited financial statements?</p> <p>20 A There is a reference to promissory notes</p> <p>21 in aggregate of \$7.4 million, yes.</p> <p>22 Q And those are the two notes that Highland</p> <p>23 is suing on; correct?</p> <p>24 A I would assume that's the case, because</p> <p>25 the dollar amounts line up. But I don't have the</p>	<p>Page 49</p> <p>1 Dustin Norris</p> <p>2 backup, but I would assume that's the case.</p> <p>3 Q And not only do the dollar amounts line</p> <p>4 up, but do you see that the statement in</p> <p>5 "Subsequent Events" specifically identifies the</p> <p>6 notes as having been issued in the year 2019?</p> <p>7 A Yes.</p> <p>8 Q And are you aware of any notes that</p> <p>9 anybody in the world contends were signed by HCMFA</p> <p>10 between January 1st, 2019, and June 3rd, 2019,</p> <p>11 other than the two notes that Highland is suing</p> <p>12 on?</p> <p>13 A No.</p> <p>14 Q Okay. So can you conclude, as HCMFA's</p> <p>15 30(b)(6) witness, that the notes that are</p> <p>16 described in the subsequent events are the very</p> <p>17 notes that are the subject of the pending lawsuit?</p> <p>18 A That appears to be the case.</p> <p>19 Q Okay. And so it's also fair to say, then,</p> <p>20 that HCMFA does not dispute that its own audited</p> <p>21 financial statements that were the subject of a</p> <p>22 June 3rd, 2019, opinion by PricewaterhouseCoopers</p> <p>23 disclosed the existence of the notes at issue;</p> <p>24 correct?</p> <p>25 A No. We don't dispute that that was</p>

<p>Page 50</p> <p>1 Dustin Norris</p> <p>2 included in the financial statements. You know,</p> <p>3 I – I think we're going to get into it in our</p> <p>4 affirmative defenses, but we dispute that the</p> <p>5 notes were actually valid notes, and we would say</p> <p>6 that this was an error. These should not have</p> <p>7 been included, but were included in good faith by</p> <p>8 the accounting team who thought that they were</p> <p>9 valid notes.</p> <p>10 Q Okay.</p> <p>11 A So –</p> <p>12 MR. MORRIS: I move to strike</p> <p>13 everything other than the first portion of</p> <p>14 your answer that was responsive to my</p> <p>15 question.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q HCMFA does not dispute that it received</p> <p>18 \$2.4 million from Highland on May 2nd, does it?</p> <p>19 A No.</p> <p>20 Q HCMFA does not dispute that it received</p> <p>21 \$5 million on May 3rd, 2019, does it?</p> <p>22 A No.</p> <p>23 Q Let's just confirm that, if we can.</p> <p>24 MR. MORRIS: Can we put on the</p> <p>25 screen a document that's been marked as</p>	<p>Page 51</p> <p>1 Dustin Norris</p> <p>2 Exhibit 147?</p> <p>3 (Exhibit 147 tendered.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q Okay. Do you see that this is – or at</p> <p>6 least this appears to be a bank account statement?</p> <p>7 A Yes. BBVA Compass is a bank, so I'll take</p> <p>8 your representation it's a statement.</p> <p>9 MR. MORRIS: All right. And if we</p> <p>10 can just scroll down.</p> <p>11 All right. Stop right there.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Do you see that there's a reference on</p> <p>14 May 2nd to a 2.4-million-dollar transfer?</p> <p>15 A I do.</p> <p>16 Q Okay. And is that consistent with your</p> <p>17 testimony just now that on May 2nd, Highland</p> <p>18 transferred \$2.4 million to HCMFA?</p> <p>19 A That's correct.</p> <p>20 Q And lower on the page, the statement shows</p> <p>21 a transfer of \$5 million on May 3rd; correct?</p> <p>22 A Yes.</p> <p>23 Q And that's the payment that HCMFA</p> <p>24 acknowledged – acknowledges receiving from</p> <p>25 Highland on that day; correct?</p>
<p>Page 52</p> <p>1 Dustin Norris</p> <p>2 A Is this HCMFA's bank statement or is this</p> <p>3 HCMLP's?</p> <p>4 Q No. It's HCMLP's.</p> <p>5 A Okay. It just says "Highland Capital</p> <p>6 Management," and I'm assuming it lines up – I'm</p> <p>7 assuming this is the transfer, but –</p> <p>8 Q Okay.</p> <p>9 A – I can't confirm an entity. But we're</p> <p>10 not denying that there was cash received those</p> <p>11 dates from HCMLP.</p> <p>12 Q Okay. And are you aware –</p> <p>13 MR. MORRIS: We can take this down</p> <p>14 now.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q Do you recall that Topic Number 10 asks</p> <p>17 for a witness who can testify about the accounting</p> <p>18 of these transfers?</p> <p>19 A Uh-huh. Yup.</p> <p>20 Q Are you prepared to testify on Topic</p> <p>21 Number 10?</p> <p>22 A Yes.</p> <p>23 Q Can you tell me how HCMFA accounted for</p> <p>24 these payments on its books and records?</p> <p>25 A I can, yeah.</p>	<p>Page 53</p> <p>1 Dustin Norris</p> <p>2 So my understanding of the company's</p> <p>3 position is that – and – and it may be helpful</p> <p>4 to provide some additional color leading up to the</p> <p>5 accounting. I don't know if we want to address</p> <p>6 that later in our affirmative defenses, if you</p> <p>7 have a preference there.</p> <p>8 Q I'd just like you to – maybe it's my</p> <p>9 question, but I just want you to focus on my</p> <p>10 question.</p> <p>11 A Uh-huh.</p> <p>12 Q And that is: First, do you know how HCMFA</p> <p>13 accounted for these two payments in its books and</p> <p>14 records?</p> <p>15 A Yeah. So the HCMLP employees who were</p> <p>16 tasked with creating books and records of the</p> <p>17 adviser, the accounting team recorded, we – we –</p> <p>18 our position is that is an incorrect recording of</p> <p>19 a payable to HCMLP. And so there was a payable</p> <p>20 booked on the balance sheet of HCMFA by the HCMLP</p> <p>21 accounting team.</p> <p>22 MR. MORRIS: Okay. I'm going to</p> <p>23 move to strike.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q I – I'd appreciate not having the</p>

<p>Page 54</p> <p>1 Dustin Norris</p> <p>2 commentary. Your counsel can ask those questions</p> <p>3 or if it's responsive to a question. I'm just</p> <p>4 asking a very simple question.</p> <p>5 A Yup.</p> <p>6 Q How – how did HCMFA record these payments</p> <p>7 on its books and records?</p> <p>8 A Yeah. My understanding is they recorded a</p> <p>9 payable to HCMFP, a liability.</p> <p>10 Q And do you know when HCMFA first</p> <p>11 discovered that the payments were booked on its</p> <p>12 books and records as a liability?</p> <p>13 A Our position is that that was revealed</p> <p>14 through after the – sorry – after the demand.</p> <p>15 And as we began to get additional information –</p> <p>16 particularly, and I would refer you to</p> <p>17 Mr. Sauter's declaration, our amended response,</p> <p>18 and our second amended response that was filed</p> <p>19 yesterday regarding each of those time periods.</p> <p>20 But it was after the demand we found out how it</p> <p>21 was booked.</p> <p>22 Q Okay. So just to simplify this: HCMFA's</p> <p>23 books and records recorded the transfers on</p> <p>24 May 2nd and May 3rd as liabilities from HCMFA to</p> <p>25 Highland; correct?</p>	<p>Page 55</p> <p>1 Dustin Norris</p> <p>2 A So my understanding is the audited</p> <p>3 financials recorded in a subsequent event – you</p> <p>4 showed me that – they recorded a subsequent</p> <p>5 event. The balance sheet as of 12/31/2018 wasn't</p> <p>6 amended because it was a subsequent event. But on</p> <p>7 their books and records at that time, or</p> <p>8 subsequent to that, they recorded a liability.</p> <p>9 Q And – and do you know if that liability</p> <p>10 was recorded contemporaneously in May of 2019?</p> <p>11 A I don't know.</p> <p>12 Q But it's – it's HCMFA's position that,</p> <p>13 notwithstanding the recording of the liability on</p> <p>14 its books and records, that HCMFA didn't learn of</p> <p>15 that fact until after the demand letter was sent</p> <p>16 in December of 2020.</p> <p>17 Do I have that right?</p> <p>18 A Correct.</p> <p>19 Q Okay. Have there been any changes in</p> <p>20 HCMFA's books and records since it learned of the</p> <p>21 promise – of the existence of the promise –</p> <p>22 withdrawn.</p> <p>23 Has – has HCMFA changed its books and</p> <p>24 records after learning that the payments were</p> <p>25 recorded as liabilities?</p>
<p>Page 56</p> <p>1 Dustin Norris</p> <p>2 A I'm not aware of how it's been treated</p> <p>3 since then.</p> <p>4 Q Okay.</p> <p>5 MR. RUKAVINA: And, John, no</p> <p>6 urgency, but find some time in the near</p> <p>7 future for the restroom break. The</p> <p>8 morning coffee is working its magic.</p> <p>9 MR. MORRIS: Happy to do it right</p> <p>10 now, Davor.</p> <p>11 THE WITNESS: I can use that, too.</p> <p>12 I'm almost through my water bottle.</p> <p>13 MR. MORRIS: All right. So, look,</p> <p>14 it's 12:05. Let's just come back at 12:15</p> <p>15 or 11:15.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MR. MORRIS: Thanks so much.</p> <p>18 (Recess from 11:05 a.m. to 11:16 a.m. CST)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q To the best of your knowledge, has HCMFA</p> <p>21 ever changed its books and records in order to</p> <p>22 reverse the booking of the payments that were made</p> <p>23 by Highland in May from liabilities to something</p> <p>24 else?</p> <p>25 A I'm not aware of how the accounting</p>	<p>Page 57</p> <p>1 Dustin Norris</p> <p>2 entries have been done since then, but – yeah,</p> <p>3 I'm not aware.</p> <p>4 Q Okay. But you'll – you'll agree that the</p> <p>5 accounting for these two payments was among the</p> <p>6 30(b)(6) topics, correct, Number 11 – Number 10?</p> <p>7 A Yes.</p> <p>8 Q And as the 30(b)(6) witness for HCMFA, can</p> <p>9 you confirm that, to the best of your knowledge,</p> <p>10 those payments were booked as liabilities and the</p> <p>11 booking of those payments as – as liabilities has</p> <p>12 not changed?</p> <p>13 A To the best of my knowledge, they were</p> <p>14 booked as liabilities, and I don't know how they</p> <p>15 have been treated. There's not been a year-end</p> <p>16 audit for 2021, and I'm sure the accountants and</p> <p>17 auditors will determine based on current facts and</p> <p>18 circumstances how those will be reported.</p> <p>19 Q Okay. But as of today, you have no</p> <p>20 knowledge that the booking of those payments as</p> <p>21 liabilities has ever been changed; correct?</p> <p>22 A Those – there's no financial statements</p> <p>23 that are prepared, I believe, intra-year, during</p> <p>24 the year, for audited purposes. And so, you know,</p> <p>25 that – that would be, I'm sure, determined based</p>

<p>Page 58</p> <p>1 Dustin Norris</p> <p>2 on any audit needs.</p> <p>3 Q Does HCMFA maintain an accounts payable</p> <p>4 ledger?</p> <p>5 A I'm sure it does.</p> <p>6 Q Did you do anything to try to ascertain</p> <p>7 whether or not these notes appear as liabilities</p> <p>8 on the accounts payable ledger?</p> <p>9 A As current accounts payable ledger?</p> <p>10 Q Yeah.</p> <p>11 A No.</p> <p>12 Q Did you – other than the audited</p> <p>13 financial statements, did you take any steps to</p> <p>14 ascertain how these payments were recorded in</p> <p>15 HCMFA's books and records, or is – or is it only</p> <p>16 on the audited financial statements?</p> <p>17 A So at the time that they were recorded, we</p> <p>18 know they were recorded as liabilities on the</p> <p>19 books and records.</p> <p>20 Q And when you say that it was recorded as a</p> <p>21 liability in the books and records, where in the</p> <p>22 books and records was it recorded as a liability?</p> <p>23 A Meaning on the balance sheet?</p> <p>24 Q Okay. So the balance sheet is one place;</p> <p>25 is that right?</p>	<p>Page 59</p> <p>1 Dustin Norris</p> <p>2 A Yes. We record liabilities on the balance</p> <p>3 sheet.</p> <p>4 Q Okay. Did HCMFA complete its audit for</p> <p>5 2019?</p> <p>6 A I don't – not that I'm aware of. I don't</p> <p>7 believe they had an audit for 2019.</p> <p>8 Q Okay. Now, HCMFA contends that the</p> <p>9 payments were – should not have been booked as a</p> <p>10 loan because they were supposed to be compensation</p> <p>11 for the error that Highland made in connection</p> <p>12 with the NAV error; correct?</p> <p>13 A Correct.</p> <p>14 Q Okay. Did HCMFA ever issue an invoice or</p> <p>15 a bill of any kind to Highland?</p> <p>16 A Not that I'm aware of.</p> <p>17 Q Okay. Is there anything in HCMFA's books</p> <p>18 and records that reflects its position that the</p> <p>19 payments should not have been billed as</p> <p>20 liabilities, but they should have been billed as</p> <p>21 income?</p> <p>22 A As compensation?</p> <p>23 Q Yeah.</p> <p>24 A Yes.</p> <p>25 Anything in their records?</p>
<p>Page 60</p> <p>1 Dustin Norris</p> <p>2 Q Yes.</p> <p>3 A I – I would refer you to the testimony of</p> <p>4 Mr. Dondero and Mr. Waterhouse, who both testified</p> <p>5 to this; Mr. Dondero that it was compensation, and</p> <p>6 that Frank testified in his deposition that he</p> <p>7 don't – didn't remember Mr. Dondero saying it was</p> <p>8 a loan, and that Mr. Dondero told him to get the</p> <p>9 money from Highland. And so it's – it's – that</p> <p>10 is on the record and in the record.</p> <p>11 But in HCMFA's other records, we have</p> <p>12 the president of HCMLP, Jim Dondero, who made that</p> <p>13 transfer and has said that that is for</p> <p>14 compensation.</p> <p>15 So there is – but there is – I</p> <p>16 wouldn't – I would be surprised to see some kind</p> <p>17 of a settlement agreement or invoice with – to</p> <p>18 affiliates.</p> <p>19 MR. MORRIS: Okay. I move to</p> <p>20 strike.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q And my answer – my question is really</p> <p>23 simple.</p> <p>24 Is there anything in HCMFA's books and</p> <p>25 records that reflects its position that these</p>	<p>Page 61</p> <p>1 Dustin Norris</p> <p>2 payments were supposed to be made as compensation</p> <p>3 rather than in the form of loans?</p> <p>4 A I – I would say that the pleadings are a</p> <p>5 part of our books and records now. I would say</p> <p>6 depositions. And within that, it is well</p> <p>7 documented.</p> <p>8 Q Okay. Let me ask a different question</p> <p>9 then.</p> <p>10 Remember we were using the answer date</p> <p>11 as being March 1st, 2021.</p> <p>12 A Correct.</p> <p>13 Q Is there anything in HCMFA's books and</p> <p>14 records that was created prior to March 1st, 2021,</p> <p>15 that corroborates HCMFA's position that the</p> <p>16 payments were intended to be compensation and not</p> <p>17 in the form of a loan?</p> <p>18 A Yeah, and I would, again, refer you to</p> <p>19 DC's – what do you call it – declaration. That</p> <p>20 prior to that, we didn't have access to – to,</p> <p>21 largely, our books and records as that was</p> <p>22 outsourced to Highland Capital Management, LP, and</p> <p>23 to their employees, legal, compliance, and</p> <p>24 accounting. So our position is we did not have</p> <p>25 anything at that point related to this agreement.</p>

<p>Page 62</p> <p>1 Dustin Norris</p> <p>2 MR. MORRIS: Okay. I move to</p> <p>3 strike.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q And listen carefully to my question.</p> <p>6 Is HCMFA aware of anything that was</p> <p>7 created prior to the answer date that corroborates</p> <p>8 its position today that the payments were intended</p> <p>9 to be treated as compensation rather than a loan?</p> <p>10 A I – I think as far as books and records</p> <p>11 go, we have NAV error memos, we have communication</p> <p>12 with the SEC. Right?</p> <p>13 There's – there is a lot of</p> <p>14 information related to the services that were</p> <p>15 performed under the shared services agreement,</p> <p>16 were for valuation purposes that Highland had</p> <p>17 created and was responsible for the valuation</p> <p>18 process, and that is a host of documents that are</p> <p>19 in the record, yes.</p> <p>20 MR. MORRIS: Okay. I – I move to</p> <p>21 strike.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q I'm asking about accounting. Maybe it's</p> <p>24 my fault. Okay? I'll – I'll take responsibility</p> <p>25 for this. I'm asking as a matter of accounting.</p>	<p>Page 63</p> <p>1 Dustin Norris</p> <p>2 I'm still on 30(b)(6) Topic Number 10.</p> <p>3 Is there anything in HCMFA's books and</p> <p>4 records that was created before the answer date</p> <p>5 that shows that the payment should have been</p> <p>6 accounted for as compensation rather than as a</p> <p>7 loan?</p> <p>8 A As far as an accounting record, I wouldn't</p> <p>9 expect there to be, because the accountant</p> <p>10 function was outsourced to HCMLP, and – and I</p> <p>11 would refer you to our latest response and our</p> <p>12 amended response of – of what was discovered and</p> <p>13 found throughout the process here.</p> <p>14 The accountants recorded a liability</p> <p>15 and they thought it should be liability. And so,</p> <p>16 no, there wasn't anything, to my knowledge, prior</p> <p>17 to that that was in the accounting books and</p> <p>18 records. And I – you know, I'm not surprised</p> <p>19 there wasn't, because of the facts that you'll –</p> <p>20 you'll see in our amended answers.</p> <p>21 Q Okay. Do you know whether, if it was</p> <p>22 intended to be compensation, that HCMFA's income</p> <p>23 statement should have shown the inflow of the</p> <p>24 \$7.4 million?</p> <p>25 A I don't know how it would be reported for</p>
<p>Page 64</p> <p>1 Dustin Norris</p> <p>2 accounting purposes. I – I do have an accounting</p> <p>3 background, but I haven't done accounting in a</p> <p>4 long time, and I'm not an expert in adviser</p> <p>5 financial statements. So I would say I don't</p> <p>6 have – and I guess – I guess that – stepping</p> <p>7 back and answering on behalf of the company here,</p> <p>8 I don't have a knowledge of how that would be</p> <p>9 recorded for income statement purposes.</p> <p>10 Q Okay.</p> <p>11 A But it would – it would be compensation</p> <p>12 that would be reported –</p> <p>13 Q Okay.</p> <p>14 A – somewhere in the financial statements.</p> <p>15 Q So it's your testimony today, as HCMFA's</p> <p>16 30(b)(6) witness, that HCMFA was unaware that its</p> <p>17 audited financial statements disclosed these notes</p> <p>18 until after the lawsuit was commenced.</p> <p>19 Do I have that right?</p> <p>20 A That's correct.</p> <p>21 Q And it's your position today, as HCMFA's</p> <p>22 30(b)(6) witness, that HCMFA was unaware that the</p> <p>23 payments that were made by Highland were booked as</p> <p>24 liabilities until sometime after the lawsuit was</p> <p>25 commenced; correct?</p>	<p>Page 65</p> <p>1 Dustin Norris</p> <p>2 A Yes, that's correct. The accounting</p> <p>3 function was outsourced to HCMLP.</p> <p>4 Q Okay. And there's – was there anybody –</p> <p>5 was there any officer of HCMFA who had</p> <p>6 responsibility for reviewing HCMFA's balance</p> <p>7 sheet?</p> <p>8 A I believe I already answered this earlier.</p> <p>9 Q I actually asked the question on the</p> <p>10 audited financial statements.</p> <p>11 A Okay.</p> <p>12 Q Now I'm going to ask specifically. Is</p> <p>13 there anybody who served as an officer of HCMFA</p> <p>14 who had the responsibility of making sure that</p> <p>15 HCMFA's balance sheets were true and accurate?</p> <p>16 A Yes. So Frank Waterhouse and his team,</p> <p>17 Frank was the named treasurer of HCMFA, and his</p> <p>18 role at HCMLP, as a service provider, would have</p> <p>19 had that responsibility along with his team.</p> <p>20 Q Okay. Let's go to the next topic,</p> <p>21 Topic 11. Do you see Topic 11 refers to</p> <p>22 "communications in 2020 with any retail board –</p> <p>23 A Yes.</p> <p>24 Q – concerning the amounts due and owing to</p> <p>25 Highland"?</p>

<p style="text-align: right;">Page 66</p> <p>1 Dustin Norris</p> <p>2 A Yes, I do.</p> <p>3 Q Okay. HCMFA is a financial advisory firm;</p> <p>4 correct?</p> <p>5 A It is.</p> <p>6 Q And it provides advisory services to</p> <p>7 certain funds; correct?</p> <p>8 A It does.</p> <p>9 Q And those advisory services are provided</p> <p>10 pursuant to written agreements; correct?</p> <p>11 A They are.</p> <p>12 Q And those agreements are subject to annual</p> <p>13 review; correct?</p> <p>14 A They are.</p> <p>15 Q And those agreements the principal source</p> <p>16 of HCMFA's revenue?</p> <p>17 A Yes, I believe so.</p> <p>18 Q Okay. It's among the most important</p> <p>19 contracts HCMFA has; correct?</p> <p>20 A Yes.</p> <p>21 Q In fact, it's the reason for HCMFA's</p> <p>22 existence, is that fair, is to serve the funds?</p> <p>23 A Largely, yes.</p> <p>24 Q And the funds are managed by boards;</p> <p>25 correct?</p>	<p style="text-align: right;">Page 67</p> <p>1 Dustin Norris</p> <p>2 A Correct.</p> <p>3 Q And can we refer to the boards that manage</p> <p>4 the funds that are served by the advisers as "the</p> <p>5 retail board"?</p> <p>6 A Yes.</p> <p>7 Q Okay. Did you participate – are you</p> <p>8 aware that in the fall of 2020 the retail board</p> <p>9 conducted a review in connection with the</p> <p>10 determination as to whether or not to renew</p> <p>11 HCMFA's contracts?</p> <p>12 A I am aware, yes.</p> <p>13 Q Did you participate in that process?</p> <p>14 A I did, in some – in some parts, yes.</p> <p>15 Q What parts did you participate in?</p> <p>16 A Yeah, so I attended the board meetings in</p> <p>17 relation to – we call this the 15(c) analysis.</p> <p>18 And so it's Section 15(c) of the 1940 Act requires</p> <p>19 the board to determine and renew the contracts on</p> <p>20 an annual basis. And so they look at a number of</p> <p>21 factors. And there's, I believe, certain case law</p> <p>22 that dictates the things that they should look at:</p> <p>23 Quality of services, performance, fees.</p> <p>24 And so my aspect – the biggest part</p> <p>25 of my contribution is to talk about the</p>
<p style="text-align: right;">Page 68</p> <p>1 Dustin Norris</p> <p>2 performance of the funds, how they performed</p> <p>3 during the year. We hire an outside third party</p> <p>4 to come in and talk about performance and fees. I</p> <p>5 help provide insight, talk about – as I oversee</p> <p>6 the sales and business development of the firm, I</p> <p>7 talk about inflows and outflows, which help –</p> <p>8 helps impact the economies of scale funds. We</p> <p>9 have certain funds that are shrinking, some that</p> <p>10 are growing. So talking about future, talking</p> <p>11 about mergers, talking about different aspects of</p> <p>12 that.</p> <p>13 And so my – mine is more of the sales</p> <p>14 business development function and regarding the</p> <p>15 services. One of the things that we do as the</p> <p>16 adviser is we, again – they have to determine</p> <p>17 that the quality of services we're providing are</p> <p>18 sufficient, and so they have to get comfortable</p> <p>19 with the various functions.</p> <p>20 Q Okay. Who else on behalf of HCMFA</p> <p>21 participated in the 15(c) analysis that you've</p> <p>22 just described?</p> <p>23 A Yeah, so as – again, going back to the</p> <p>24 shared services agreement, I point you to the</p> <p>25 services that are provided by HCMLP. In large</p>	<p style="text-align: right;">Page 69</p> <p>1 Dustin Norris</p> <p>2 part, this process is managed and run by the HCMLP</p> <p>3 employees as part of that shared services. Legal</p> <p>4 and compliance help draft the memos. They are –</p> <p>5 Q And I'm going to interrupt you, and I</p> <p>6 really apologize for doing that. I'm not asking</p> <p>7 about HCMLP.</p> <p>8 A Yeah.</p> <p>9 Q These are – these are HCMFA's contracts;</p> <p>10 correct?</p> <p>11 A They are.</p> <p>12 Q And they're the most important contracts</p> <p>13 that HCMFA has; correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. So who – which officers of HCMFA</p> <p>16 are involved in the 15(c) analysis?</p> <p>17 A Yeah, one – going back to – to clarify</p> <p>18 on your – you know, this is the most important</p> <p>19 thing, you know, that we have, it is, and as such</p> <p>20 we have – a lot of those functions, and to talk</p> <p>21 about HCMFA's role, we have front-office</p> <p>22 investment professionals who join those meetings</p> <p>23 to talk about the funds and performance. The</p> <p>24 aspects of the adviser that we provide and source</p> <p>25 is the management of the funds: The performance,</p>

<p>Page 70</p> <p>1 Dustin Norris</p> <p>2 the investment selection. And then we bring in</p> <p>3 HCMLP to provide the various other services. And</p> <p>4 so they are a huge part of that. To say that –</p> <p>5 yeah, it's not – they are legal, compliance,</p> <p>6 accounting, finance, back office, settlement.</p> <p>7 Those are all functions that they're providing.</p> <p>8 Q I know – I appreciate that they're</p> <p>9 functions that they play under the shared services</p> <p>10 agreement.</p> <p>11 A Yup.</p> <p>12 Q Let me – let me move on.</p> <p>13 A Okay. Go ahead.</p> <p>14 Q In October 2020, HCMFA informed the retail</p> <p>15 board that HCMFA was obligated to pay Highland the</p> <p>16 outstanding principal amount due under the notes;</p> <p>17 correct?</p> <p>18 MR. RUKAVINA: Objection; form.</p> <p>19 THE WITNESS: Yeah, the</p> <p>20 obligated – I would – sorry. Can you</p> <p>21 ask the question again?</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Sure.</p> <p>24 In October 2020, HCMFA informed the</p> <p>25 retail board of the existence of the notes;</p>	<p>Page 71</p> <p>1 Dustin Norris</p> <p>2 correct?</p> <p>3 A Not that I'm aware of. If you have</p> <p>4 something you could – you know, a document or</p> <p>5 something that you're thinking of?</p> <p>6 Q So you participated in the 15(c) process,</p> <p>7 and you have no knowledge of HCMFA informing the</p> <p>8 retail board of the existence of the notes?</p> <p>9 A Of these notes? No. And I would say that</p> <p>10 there was a question from the retail board posed</p> <p>11 to the advisers, which we passed along to HCMLP,</p> <p>12 which included Lauren Thedford as an HCMLP</p> <p>13 employee and Frank Waterhouse, is: Were there any</p> <p>14 liabilities to – owed to Highland?</p> <p>15 Q So let's take a look – I'm sorry. Go</p> <p>16 ahead.</p> <p>17 A No, go ahead.</p> <p>18 Q I was going to say, let's take a look at</p> <p>19 that.</p> <p>20 MR. MORRIS: So if we could put up</p> <p>21 on the screen Exhibit 59.</p> <p>22 (Exhibit 59 tendered.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q Have you seen this document before, sir?</p> <p>25 A I have.</p>
<p>Page 72</p> <p>1 Dustin Norris</p> <p>2 Q And this is the report that the advisers</p> <p>3 gave to the retail board in October 2020 as part</p> <p>4 of the 15(c) analysis; correct?</p> <p>5 A Yes, working closely with HCMLP in the</p> <p>6 accounting, compliance, and legal function did</p> <p>7 draft this.</p> <p>8 Q Okay. And who – who on behalf of the</p> <p>9 advisers authorized the sending of this memo?</p> <p>10 A I don't know that there's a formal</p> <p>11 authorization. Lauren Thedford, who was the</p> <p>12 secretary of the advisers and an HCMLP employee,</p> <p>13 helped prepare the memo along with the rest of the</p> <p>14 legal and compliance team. Thomas Sargent was</p> <p>15 probably involved.</p> <p>16 MR. MORRIS: Okay. I'm going to</p> <p>17 move to strike.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q I don't want to know who was probably</p> <p>20 involved. I actually asked a very specific</p> <p>21 question, and if you don't know, please just say</p> <p>22 you don't know.</p> <p>23 Who on behalf of the advisers</p> <p>24 authorized the sending of this memo to the retail</p> <p>25 board?</p>	<p>Page 73</p> <p>1 Dustin Norris</p> <p>2 A I don't know.</p> <p>3 Q Did anybody on behalf of the advisers ever</p> <p>4 suggest that this memo was wrong or inaccurate in</p> <p>5 any way to the best of your knowledge?</p> <p>6 A At that time? Is that what you mean?</p> <p>7 Q Yes.</p> <p>8 A No, not – not to my knowledge.</p> <p>9 Q Okay. When did you see this memo for the</p> <p>10 first time?</p> <p>11 A I may have been copied on it at the time.</p> <p>12 I don't remember if I read it, but I did review</p> <p>13 it – and actually, I didn't review the whole</p> <p>14 memo. I reviewed the one email that was related</p> <p>15 to the note payable in this. So I don't know that</p> <p>16 I read the whole memo.</p> <p>17 Q So – so –</p> <p>18 MR. MORRIS: Can we see how long</p> <p>19 the memo is?</p> <p>20 BY MR. MORRIS:</p> <p>21 Q So it's two pages, and it's got some</p> <p>22 charts; is that fair?</p> <p>23 A That's fair.</p> <p>24 Q And in October 2020, you were the</p> <p>25 executive vice president of every single entity</p>

<p style="text-align: right;">Page 74</p> <p>1 Dustin Norris</p> <p>2 that this email is being sent to and from;</p> <p>3 correct?</p> <p>4 A I'm looking at the entities.</p> <p>5 I'm executive vice president of most</p> <p>6 of the entities.</p> <p>7 Q Okay. You're the executive vice president</p> <p>8 of each of the entities that are sending this</p> <p>9 memo; correct?</p> <p>10 A No. Not NexPoint Securities.</p> <p>11 Q I appreciate that. Thank you for the</p> <p>12 clarification.</p> <p>13 Did you review this before it was</p> <p>14 sent?</p> <p>15 A I don't remember.</p> <p>16 Q Did you take any steps to make sure that</p> <p>17 it was accurate?</p> <p>18 A Probably not. And that wouldn't have been</p> <p>19 my function. We had a legal and compliance team</p> <p>20 that was – through the shared services agreement</p> <p>21 that prepared memos. This is going to the board.</p> <p>22 That would have all obviously gone through legal</p> <p>23 and compliance. It wouldn't have been my</p> <p>24 function.</p> <p>25 Q Did anybody who served as an officer or</p>	<p style="text-align: right;">Page 75</p> <p>1 Dustin Norris</p> <p>2 employee of HCMFA have any responsibility to make</p> <p>3 sure that this memo was true and accurate before</p> <p>4 it was sent to the retail board?</p> <p>5 A Lauren Thedford was the secretary of the</p> <p>6 advisers and the funds, and I believe this has to</p> <p>7 do with – and depending on the material, I think</p> <p>8 this has to do with the note, and other things.</p> <p>9 So the finance team, Frank Waterhouse and his team</p> <p>10 at HCMLP, would have been supplying those answers.</p> <p>11 Q Okay. And why do you keep saying Frank</p> <p>12 Waterhouse at HCMLP instead of Frank Waterhouse as</p> <p>13 the treasurer of the entity that's sending this</p> <p>14 memo?</p> <p>15 A Because Frank was the CFO of Highland who</p> <p>16 was responsible for the accounting, finance,</p> <p>17 back-office functions of these funds. And the</p> <p>18 answer – the adviser did not have that</p> <p>19 information, and intentionally hired HCMLP to</p> <p>20 provide that function. And so that is how it was</p> <p>21 viewed. Those were HCMLP employees, and that was</p> <p>22 under the shared services agreement.</p> <p>23 Q Is it your testimony as the HCMFA 30(b)(6)</p> <p>24 witness that Frank Waterhouse did not have any</p> <p>25 responsibility in his capacity as the treasurer of</p>
<p style="text-align: right;">Page 76</p> <p>1 Dustin Norris</p> <p>2 HCMFA to make sure that this report was true and</p> <p>3 accurate before it was sent to the retail board?</p> <p>4 A I don't know of any function or</p> <p>5 requirement of his role as treasurer of HCMFA that</p> <p>6 he was responsible for reviewing 15(c) memos prior</p> <p>7 to going to the board.</p> <p>8 Q And other than Lauren Thedford, you can't</p> <p>9 identify any officer or employee of HCMFA who had</p> <p>10 any responsibility to make sure that this report</p> <p>11 was true and accurate before it was sent; is that</p> <p>12 correct?</p> <p>13 A No. And I can't – and I would, again, go</p> <p>14 back to legal. And this is a memo that is going</p> <p>15 to the board and is a legal and compliance</p> <p>16 function that would have been provided services by</p> <p>17 HCMLP. And that was always the case. Those</p> <p>18 employees, for years, have provided the</p> <p>19 legal/compliance support of memos of the 15(c)</p> <p>20 process and the support for everything that went</p> <p>21 into it.</p> <p>22 MR. MORRIS: Okay. Move to strike.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q Do you know if Jim Dondero reviewed this</p> <p>25 before it was sent?</p>	<p style="text-align: right;">Page 77</p> <p>1 Dustin Norris</p> <p>2 A I don't know for sure, but I highly doubt.</p> <p>3 He was never, to my knowledge, involved in</p> <p>4 drafting or reviewing 15(c) memos.</p> <p>5 Q Okay. You'll agree that this memo was</p> <p>6 sent by the advisers in response to the retail</p> <p>7 board's questions; correct?</p> <p>8 A Correct.</p> <p>9 Q And you'll agree –</p> <p>10 A And actually, let me – let me correct</p> <p>11 that.</p> <p>12 It was from the advisers. I believe</p> <p>13 that HCMLP employees sent it, getting back to –</p> <p>14 it was sent by – technicality, but I believe</p> <p>15 Lauren Thedford would have sent this.</p> <p>16 Q And why do you say that she sent it in her</p> <p>17 capacity as an HCMLP employee rather than as the</p> <p>18 secretary of the entity that's actually the author</p> <p>19 of the memo?</p> <p>20 A Because that was the function that they</p> <p>21 were providing as part of the shared services</p> <p>22 agreement. And I – yeah. That was what – she's</p> <p>23 part of the legal team at HCMLP, and that was the</p> <p>24 service she was providing. We didn't have a legal</p> <p>25 and compliance function at HCMFA.</p>

<p>Page 78</p> <p>1 Dustin Norris</p> <p>2 Q Okay.</p> <p>3 MR. MORRIS: Can we scroll down to</p> <p>4 Question 2, please?</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Have you seen Question 2 before?</p> <p>7 A Yes.</p> <p>8 Q Do you have an understanding of what was</p> <p>9 being requested by the retail board in Question</p> <p>10 Number 2?</p> <p>11 A Yes. They are asking for amounts</p> <p>12 currently payable or due in the future to HCMLP by</p> <p>13 HCMFA or NexPoint Advisors.</p> <p>14 Q And – and did the advisers report to the</p> <p>15 retail board in October 2020 that, quote,</p> <p>16 "\$12,286,000 remains outstanding to HCMLP from</p> <p>17 HCMFA"?</p> <p>18 A It says it right there. That's in the</p> <p>19 memo.</p> <p>20 Q Okay.</p> <p>21 A And I would note that came from Frank</p> <p>22 Waterhouse and his team, that information, the</p> <p>23 accounting department at HCMLP.</p> <p>24 MR. MORRIS: Okay. I move to</p> <p>25 strike everything after the portion of</p>	<p>Page 79</p> <p>1 Dustin Norris</p> <p>2 your answer that was responsive to my</p> <p>3 question.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q As HCMFA's 30(b)(6) witness today, have</p> <p>6 you done anything to determine whether or not the</p> <p>7 \$12.286 million number includes the principal</p> <p>8 amount of the notes?</p> <p>9 A Looking at it, we can't tell. Because it</p> <p>10 doesn't line up exactly with those notes. There</p> <p>11 were other notes that had been recorded in the</p> <p>12 books for several years before. And if you add</p> <p>13 those two together, it doesn't add up. So it's</p> <p>14 not clear.</p> <p>15 Q Did you read the testimony of Mr. Klos and</p> <p>16 Ms. Hendrix? I think you said you did; right?</p> <p>17 A I did.</p> <p>18 Q Did you read the portion of their</p> <p>19 testimony where they said that this number</p> <p>20 includes the notes as well as certain other</p> <p>21 amounts that were due and owing to certain</p> <p>22 Highland affiliates?</p> <p>23 A I did – I didn't read every single line,</p> <p>24 and there were, between the two of them – I don't</p> <p>25 know – 600 pages. So if it's in there and you</p>
<p>Page 80</p> <p>1 Dustin Norris</p> <p>2 can point to it, then I can take your</p> <p>3 representation. But I don't remember that.</p> <p>4 Q All right. So did anybody acting on</p> <p>5 behalf of HCMFA – withdrawn.</p> <p>6 Did any officer of – or employee of</p> <p>7 HCMFA do anything to make sure the information in</p> <p>8 this response was true and accurate before it was</p> <p>9 sent to the retail board?</p> <p>10 A We received it from the individuals</p> <p>11 responsible. And there was no – you know, there</p> <p>12 was no reason to doubt that it was incorrect.</p> <p>13 Right? These were professionals. We were relying</p> <p>14 on them. This is Frank Waterhouse, Dave Klos,</p> <p>15 Kristen. We anticipated this would be accurate.</p> <p>16 Q Okay. You anticipated it. But it's your</p> <p>17 testimony that no officer or employee of HCMFA did</p> <p>18 anything independently to make sure that it was</p> <p>19 accurate; that they completely and 100 percent</p> <p>20 just deferred and relied on somebody else under a</p> <p>21 contract?</p> <p>22 A Frank Waterhouse was the treasurer. You</p> <p>23 said any – any officer. He was – in his role,</p> <p>24 he provided this information. And I don't know</p> <p>25 his extent of how he looked into it, but if you</p>	<p>Page 81</p> <p>1 Dustin Norris</p> <p>2 look at the email chain, it didn't look too</p> <p>3 extensive. And if you even look at this, he's</p> <p>4 saying that the earliest the note between HCMLP</p> <p>5 and HCMFA can come due is May 21st. He himself</p> <p>6 seems to be confused here, because as we found out</p> <p>7 through discovery and in the testimony of what has</p> <p>8 come out, there was an agreement – that was a</p> <p>9 separate agreement. That wasn't related to the</p> <p>10 notes at issue in this case.</p> <p>11 And so I don't know the extent that</p> <p>12 was gone into this, but it – it – there's</p> <p>13 confusion even in the response.</p> <p>14 MR. MORRIS: Okay. I move to</p> <p>15 strike.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q Again, I was just asking about the</p> <p>18 identity of anybody who was charged with the</p> <p>19 responsibility of making sure that this was true</p> <p>20 and accurate.</p> <p>21 Is there any officer or employee of</p> <p>22 HCMFA who was charged with the responsibility of</p> <p>23 making sure this response was true and accurate?</p> <p>24 A Yeah. It was sent to – the request went</p> <p>25 to Frank Waterhouse because he and his team would</p>

<p>Page 82</p> <p>1 Dustin Norris</p> <p>2 have this information. That's -- that's where we</p> <p>3 would get this information.</p> <p>4 Q Okay. Thank you.</p> <p>5 MR. RUKAVINA: Hey, John, let me</p> <p>6 just interject for a little. Let's go off</p> <p>7 the record for just a minute.</p> <p>8 (Discussion off the record.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Do you know, as HCMFA's 30(b)(6)</p> <p>11 representative, whether the \$12.286 million</p> <p>12 includes the \$7.5 million -- withdrawn.</p> <p>13 Do you know if the 12. -- withdrawn.</p> <p>14 As HCMFA's 30(b)(6) witness, do you</p> <p>15 know whether the \$12.286 million referenced in</p> <p>16 Response Number 2 includes the \$7.4 million in</p> <p>17 principal amount on the notes?</p> <p>18 A I don't.</p> <p>19 Q Okay. Did you do anything to try to</p> <p>20 answer that question before appearing for today's</p> <p>21 deposition?</p> <p>22 A Yeah. We discussed this with counsel. We</p> <p>23 don't have underlying backup. We couldn't talk to</p> <p>24 Frank Waterhouse on this in preparation, but the</p> <p>25 numbers just don't match up to principal amounts</p>	<p>Page 83</p> <p>1 Dustin Norris</p> <p>2 and what is owing. We don't have information on</p> <p>3 the other notes. So discussed it with counsel,</p> <p>4 but I -- we don't have any backup to support or --</p> <p>5 Q Did you make -- did you make any attempt</p> <p>6 to speak with Ms. Thedford?</p> <p>7 A No, I didn't. And she wouldn't have that</p> <p>8 information. She's an attorney and was involved</p> <p>9 in the legal field, and she's no longer employed</p> <p>10 there or at Skyview.</p> <p>11 MR. MORRIS: I move to strike.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Okay. And so you don't know what the</p> <p>14 component parts of this \$12.286 million number</p> <p>15 are; correct?</p> <p>16 A I don't.</p> <p>17 Q Okay. Do you see the last sentence of</p> <p>18 this response that says, quote: "The adviser</p> <p>19 notes that both entities have the full faith and</p> <p>20 support of Jim Dondero," close quote?</p> <p>21 A I do.</p> <p>22 Q Do you know what that means?</p> <p>23 A Other than what Frank Waterhouse</p> <p>24 testified -- and I, again, refer you to his</p> <p>25 deposition -- that -- I believe that wording came</p>
<p>Page 84</p> <p>1 Dustin Norris</p> <p>2 from him, and he emailed that. So I would refer</p> <p>3 you to his testimony.</p> <p>4 Q Well, as the 30(b)(6) witness, you were</p> <p>5 asked to be prepared about communications to the</p> <p>6 retail board; correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. Did you do anything to try to</p> <p>9 figure out what that sentence meant -- that</p> <p>10 sentence meant, other than reading Frank</p> <p>11 Waterhouse's deposition transcript?</p> <p>12 A Knowing that it came from Frank, and Frank</p> <p>13 elaborated, I didn't do any additional research.</p> <p>14 Q Did you ask Mr. Dondero if he was aware</p> <p>15 that that statement was included in the report to</p> <p>16 the retail board?</p> <p>17 A I did not.</p> <p>18 Q Do you know why this statement was</p> <p>19 included in the report to the retail board?</p> <p>20 A I could speculate, but I don't know</p> <p>21 specifically.</p> <p>22 Q Do you know if Mr. Dondero authorized the</p> <p>23 advisers to inform the retail board, in October</p> <p>24 of 2020, that the advisers had the full faith and</p> <p>25 support of Mr. Dondero?</p>	<p>Page 85</p> <p>1 Dustin Norris</p> <p>2 A I'm not aware, and if you look at Frank's</p> <p>3 testimony, I believe he testified that he -- he</p> <p>4 didn't have that authority either, but I'm not</p> <p>5 sure. I would refer you to his -- I don't have</p> <p>6 any other knowledge.</p> <p>7 Q Okay. So it's HCMFA's position that the</p> <p>8 statement in the last sentence of Response</p> <p>9 Number 2 was unauthorized. Do I have that</p> <p>10 correctly?</p> <p>11 A I don't know that we're taking that</p> <p>12 position either way. It wasn't something</p> <p>13 that -- that we're -- was even part of the -- our</p> <p>14 arguments.</p> <p>15 Q I'm not asking if it's part of your</p> <p>16 arguments. I'm just asking you, as a factual</p> <p>17 matter, does HCMFA contend that that sentence was</p> <p>18 included without authorization?</p> <p>19 A I don't have the knowledge of that.</p> <p>20 That's -- I'm not going to contend that.</p> <p>21 Q Okay.</p> <p>22 A It may have been. I don't know.</p> <p>23 Q Okay. So this letter was sent over a year</p> <p>24 ago. Do I have that right?</p> <p>25 A What's the date on it?</p>

<p>Page 86</p> <p>1 Dustin Norris</p> <p>2 MR. MORRIS: If we can go back to</p> <p>3 the top.</p> <p>4 THE WITNESS: Yup.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Okay. Has – have the advisers ever told</p> <p>7 the retail board that the response to Question</p> <p>8 Number 2 was inaccurate in any way?</p> <p>9 A Specifically saying, "Hey, let me tell you</p> <p>10 this memo, Question 2, let me go back, it was</p> <p>11 inaccurate," no, that was never a specific</p> <p>12 disclosure of the retail board.</p> <p>13 However, the retail board is aware of</p> <p>14 all of the facts and circumstances surrounding the</p> <p>15 notes, and so they're aware of our position.</p> <p>16 They're aware of – they've been demanded.</p> <p>17 There's been a lawsuit involved on both notes.</p> <p>18 And – and – but, no, this specific</p> <p>19 Number 2 is incorrect, no. But they're aware of</p> <p>20 our position and what we found out since then.</p> <p>21 Q Okay. Earlier in 2020, before this memo</p> <p>22 was sent to the retail board, HCMFA had provided</p> <p>23 to the retail board its financial statements for</p> <p>24 the period ending June 30, 2020; correct?</p> <p>25 A I believe that's typical in our August</p>	<p>Page 87</p> <p>1 Dustin Norris</p> <p>2 meeting as part of the 15(c) process, but – I</p> <p>3 don't know if you have that in hand, but I believe</p> <p>4 that was supplied. I'm not certain. Sometimes it</p> <p>5 was 12/31 balance sheets, sometimes it was a</p> <p>6 June 30th balance sheet.</p> <p>7 Q Okay. Can we – are you aware – have you</p> <p>8 seen an email exchange that preceded the – the</p> <p>9 finalization of this memo to the retail board?</p> <p>10 A I believe it was part of your exhibits.</p> <p>11 Q All right.</p> <p>12 MR. MORRIS: So let's put that up</p> <p>13 on the screen, Exhibit 36.</p> <p>14 (Exhibit 36 tendered.)</p> <p>15 BY MR. MORRIS:</p> <p>16 Q So is this the document that you've seen</p> <p>17 before?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 MR. MORRIS: And can we start at</p> <p>21 the bottom of the document?</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Okay. And do you know who Stacy from</p> <p>24 Blank Rome is?</p> <p>25 A I do.</p>
<p>Page 88</p> <p>1 Dustin Norris</p> <p>2 Q And who is that?</p> <p>3 A She is independent counsel for the retail</p> <p>4 board, the independent directors.</p> <p>5 Q And did she provide to the people on this</p> <p>6 email string certain questions that the retail</p> <p>7 board had in connection with its annual 15(c)</p> <p>8 review?</p> <p>9 A Yes. These were follow-up requests. So</p> <p>10 they have a memo that she provides early on with</p> <p>11 an extensive list of questions, and these were the</p> <p>12 follow-up questions from the board.</p> <p>13 Q Okay. And so it was sent to you,</p> <p>14 actually; correct?</p> <p>15 A To me and Lauren.</p> <p>16 MR. MORRIS: Can we scroll up a</p> <p>17 little bit, please? Keep going.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q And then Lauren forwards it to certain</p> <p>20 people, including you; correct?</p> <p>21 A She forwards it to Thomas and copies me.</p> <p>22 Q Uh-huh. And – and she includes the</p> <p>23 questions that are being asked by the retail</p> <p>24 board; correct?</p> <p>25 A I don't know if – I don't know if that's</p>	<p>Page 89</p> <p>1 Dustin Norris</p> <p>2 all of them. I don't know if you have the memo.</p> <p>3 If you represent that is all the questions,</p> <p>4 then –</p> <p>5 Q Yeah.</p> <p>6 A – then I'll take that representation,</p> <p>7 but –</p> <p>8 Q And – and Question Number 2 is the same</p> <p>9 Question Number 2 that we just looked at in the</p> <p>10 report that was given to the retail board;</p> <p>11 correct?</p> <p>12 A I don't know if it's exact, but – I don't</p> <p>13 know if you want to pull that up.</p> <p>14 Q Don't you have a copy of it with you right</p> <p>15 there?</p> <p>16 A I don't know if I have a copy of that.</p> <p>17 Oh, I have the exhibits. What exhibit was that?</p> <p>18 I have it in PDF.</p> <p>19 Q Yeah, that's – that was 59.</p> <p>20 A I'm scrolling. There are 650 pages here.</p> <p>21 Sorry. Which exhibit again?</p> <p>22 Q You know, let's just move on.</p> <p>23 Is it fair to say that Ms. Thedford</p> <p>24 forwarded to Mr. Surgent, you, and others,</p> <p>25 questions that had been presented by Stacy, the</p>

<p>Page 90</p> <p>1 Dustin Norris</p> <p>2 retail board's outside counsel?</p> <p>3 A Just one correction there. She forwarded</p> <p>4 it to Mr. Surgent and copied me.</p> <p>5 Q Fair enough.</p> <p>6 A I'm not on the "To" line. That would</p> <p>7 be –</p> <p>8 MR. MORRIS: Let's scroll down,</p> <p>9 please. Let's scroll.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q And then – and then she forwards it</p> <p>12 further to Mr. Waterhouse, Mr. Klos, and</p> <p>13 Ms. Hendrix.</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q And you're still copied on it; correct?</p> <p>17 A I am.</p> <p>18 Q And do you see that she's asking Frank,</p> <p>19 Mr. Klos, and Kristin to respond to Question</p> <p>20 Number 2 that concerns material outstanding</p> <p>21 amounts currently payable or due in the future to</p> <p>22 Highland or its affiliates by either of the</p> <p>23 advisers?</p> <p>24 A Yes, it – HCMLP will take that as a typo.</p> <p>25 But yes. And that would be standard. Lauren</p>	<p>Page 91</p> <p>1 Dustin Norris</p> <p>2 would go to them as the source for that</p> <p>3 information.</p> <p>4 Q Okay.</p> <p>5 MR. MORRIS: And let's scroll up</p> <p>6 and see the response.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q And do you see Mr. Waterhouse responded</p> <p>9 with one word: "Yes"?</p> <p>10 A Yes, I see that.</p> <p>11 Q And then Ms. Thedford asked if</p> <p>12 Mr. Waterhouse could provide the amounts.</p> <p>13 Do you see that?</p> <p>14 A I do.</p> <p>15 Q And you're still copied on this email</p> <p>16 chain; correct?</p> <p>17 A I am.</p> <p>18 Q So –</p> <p>19 A Which, again, is not unusual to copy me on</p> <p>20 some things I wish they wouldn't. But I was</p> <p>21 copied on board items fairly regularly.</p> <p>22 MR. MORRIS: Okay. I move to</p> <p>23 strike.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q I appreciate your wishes, but the question</p>
<p>Page 92</p> <p>1 Dustin Norris</p> <p>2 was simply whether or not, you know, you would</p> <p>3 acknowledge that you were copied on this email.</p> <p>4 A Yup, that's my email.</p> <p>5 Q Okay. And let's see what the next</p> <p>6 response is.</p> <p>7 And do you see Mr. Waterhouse</p> <p>8 responds – can you read Mr. Waterhouse's</p> <p>9 response?</p> <p>10 A I can. He said: "It's on the balance</p> <p>11 sheet that was provided the board as part of the</p> <p>12 15(c) materials."</p> <p>13 Q Okay. So everybody to whom Mr. Waterhouse</p> <p>14 has sent – withdrawn.</p> <p>15 So you don't dispute, as HCMFA's</p> <p>16 30(b)(6) witness, that Mr. Waterhouse informed all</p> <p>17 of the recipients of his email on Tuesday,</p> <p>18 October 6th, 2020, at 6:05 p.m. that the answer to</p> <p>19 the retail board's Question Number 2 could be</p> <p>20 found in HCMFA's balance sheet; correct?</p> <p>21 A Correct.</p> <p>22 Q Okay. Let's go –</p> <p>23 A Actually, can you go back down to the</p> <p>24 answer – the exact question?</p> <p>25 Q Of course.</p>	<p>Page 93</p> <p>1 Dustin Norris</p> <p>2 Okay.</p> <p>3 A "Are there material outstanding amounts</p> <p>4 currently payable or due to the future by HCMLP to</p> <p>5 HCMFA" – yeah – "or any other affiliate?"</p> <p>6 Okay.</p> <p>7 Q Having read that, does that change your</p> <p>8 answer at all?</p> <p>9 A And so – go back to your original</p> <p>10 question on whether his –</p> <p>11 Q Right. So Mr. –</p> <p>12 MR. MORRIS: Can we scroll back up</p> <p>13 to Mr. Waterhouse's response?</p> <p>14 BY MR. MORRIS:</p> <p>15 Q Thank you for your patience, Mr. Norris.</p> <p>16 A Uh-huh.</p> <p>17 Q You'll see that Mr. Waterhouse responds at</p> <p>18 6:05 p.m. on October 6th, and my question is a</p> <p>19 simple one: Does HCMFA dispute that in</p> <p>20 Mr. Waterhouse's email that he is telling the</p> <p>21 recipients that the answer to the retail board's</p> <p>22 Question Number 2 can be found in HCMFA's balance</p> <p>23 sheet?</p> <p>24 A I would say the answer – his – his</p> <p>25 response is the answer to the retail board is not</p>

<p>Page 94</p> <p>1 Dustin Norris</p> <p>2 completely accurate, because there was – there's</p> <p>3 not enough there to be responsive. I think what</p> <p>4 he's saying here is to Lauren, "Hey, it's on the</p> <p>5 balance sheet. Can you look at it and figure it</p> <p>6 out?"</p> <p>7 And I – I think they go back and</p> <p>8 forth, "Well, can you give us more information?"</p> <p>9 And so it's – this is not responsive to the</p> <p>10 question and isn't what was provided to the board,</p> <p>11 but that's –</p> <p>12 Q Well, let – let's see what Ms. Thedford</p> <p>13 does. Ms. Thedford's the lawyer, right?</p> <p>14 A She is.</p> <p>15 Q Yeah. But she's also the secretary of</p> <p>16 HCMFA; correct?</p> <p>17 A At this time, I believe so, yes.</p> <p>18 Q And you wouldn't dispute that she is</p> <p>19 taking the lead on formulating the advisers'</p> <p>20 response to the retail board; correct?</p> <p>21 A I would not dispute that.</p> <p>22 Q Okay. And do you see that she reports to</p> <p>23 you and everybody else in her email that she has</p> <p>24 taken information from the 6/30 financials?</p> <p>25 A Yes, I see the below from the 6/30</p>	<p>Page 95</p> <p>1 Dustin Norris</p> <p>2 financials. And, again, to correct to me, I'm</p> <p>3 CC'd. It's a nuance, but she's representing to</p> <p>4 Frank and Dave and Kristin with a CC to me.</p> <p>5 Q Okay. Does HCMFA acknowledge that the</p> <p>6 information contained in the October 23rd, 2020,</p> <p>7 report to the retail board with respect to</p> <p>8 Question Number 2 was derived from HCMFA's</p> <p>9 June 30th, 2020, financials?</p> <p>10 A Sorry. One more time?</p> <p>11 Q Will you agree, as HCMFA's 30(b)(6)</p> <p>12 witness, that the information provided to the</p> <p>13 retail board in October 2020 in response to</p> <p>14 Question Number 2 was taken directly from HCMFA's</p> <p>15 financial statements for the period ending</p> <p>16 June 30th, 2020?</p> <p>17 A Yeah. The unaudited financials, yes.</p> <p>18 Q Okay. And so – so as HCMFA's 30(b)(6)</p> <p>19 witness, you will agree that the \$12,286,000</p> <p>20 figure that was included in the former response to</p> <p>21 the retail board was obtained from HCMFA's</p> <p>22 unaudited financial statements for the period</p> <p>23 ending June 30th, 2020; correct?</p> <p>24 A It appears that way.</p> <p>25 And I – I think – and, again, we're</p>
<p>Page 96</p> <p>1 Dustin Norris</p> <p>2 looking at a draft answer here. I don't have the</p> <p>3 final answer. But it looks as work product that</p> <p>4 she's pulling numbers from the unaudited balance</p> <p>5 sheet and plugging them in here.</p> <p>6 Q Okay. And we can look at the final if you</p> <p>7 want, but that \$12,286,000 number that was due to</p> <p>8 HCMLP as of June 30th 2020, that's the exact</p> <p>9 figure that was given to the retail board in the</p> <p>10 final report; correct?</p> <p>11 A "Final report," meaning the final memo –</p> <p>12 final memos?</p> <p>13 Q Yes.</p> <p>14 A Yes. Yes, I believe so.</p> <p>15 Q Okay.</p> <p>16 MR. MORRIS: Can you scroll back up</p> <p>17 to the last email?</p> <p>18 BY MR. MORRIS:</p> <p>19 Q So this is Mr. Waterhouse's response to</p> <p>20 Ms. Thedford. And, again, Mr. Waterhouse is</p> <p>21 Highland's CFO and the advisers' treasurer;</p> <p>22 correct?</p> <p>23 A Correct.</p> <p>24 Q And at this time, Ms. Thedford is an</p> <p>25 attorney at Highland, but she also serves as the</p>	<p>Page 97</p> <p>1 Dustin Norris</p> <p>2 secretary for the advisers; correct?</p> <p>3 A That's correct.</p> <p>4 Q And you are the executive vice president</p> <p>5 for the advisers; correct?</p> <p>6 A As of this date, yes.</p> <p>7 Q And you had no position with Highland;</p> <p>8 correct?</p> <p>9 A At this time?</p> <p>10 Q Correct.</p> <p>11 A No position with Highland, no.</p> <p>12 Q Okay. How about Mr. Post? Had he</p> <p>13 transitioned from Highland to the advisers as of</p> <p>14 October 6th?</p> <p>15 A I don't believe so.</p> <p>16 Q Okay. It happened in October, though;</p> <p>17 right?</p> <p>18 A I – I don't know.</p> <p>19 Q Okay.</p> <p>20 A Late October/November. It was late in the</p> <p>21 year.</p> <p>22 Q Okay. And do you know if anybody ever</p> <p>23 told Mr. Waterhouse in October 2020 that there was</p> <p>24 any aspect of his email that was incorrect?</p> <p>25 A Not at that time, no, that I'm – not that</p>

<p>Page 98</p> <p>1 Dustin Norris</p> <p>2 I'm aware of.</p> <p>3 Q Okay.</p> <p>4 A And – and would we have reason to doubt</p> <p>5 him? This – he was the source of the</p> <p>6 information.</p> <p>7 Q Okay. And do you see that the last</p> <p>8 sentence of his email actually refers to the last</p> <p>9 sentence of Response Number 2 that was given to</p> <p>10 the retail board later in October 2020?</p> <p>11 A I do.</p> <p>12 Q Did you ever ask Mr. Waterhouse anything</p> <p>13 about that last sentence?</p> <p>14 A I don't believe so.</p> <p>15 Q Do you see that he says, quote: "The</p> <p>16 response should include, as I covered in the board</p> <p>17 meeting, that both entities have the full faith</p> <p>18 and backing from Jim Dondero, and to my knowledge</p> <p>19 that hasn't changed"?</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q Do you know what board meeting he's</p> <p>23 referring to?</p> <p>24 A "The response should include, as I covered</p> <p>25 in the board meeting, that both entities have a</p>	<p>Page 99</p> <p>1 Dustin Norris</p> <p>2 full faith and backing."</p> <p>3 So I don't know the exact board</p> <p>4 meeting. However, we do have an August board</p> <p>5 meeting related to 15(c). There's typically an</p> <p>6 in-person or telephonic meeting in August, and</p> <p>7 then there's a September board meeting that is</p> <p>8 devoted almost exclusively to the 15(c) process.</p> <p>9 And after that, there is follow-up</p> <p>10 meetings – multiple sometimes, particularly in</p> <p>11 2020 during the bankruptcy proceedings that –</p> <p>12 where the board was getting comfortable. So it</p> <p>13 would have been one of those meetings, but I don't</p> <p>14 know which one.</p> <p>15 Q And – and did you personally participate</p> <p>16 in a board meeting where Mr. Waterhouse covered</p> <p>17 the topic of the advisers having the full faith</p> <p>18 and backing from Mr. Dondero?</p> <p>19 A I – I probably would have been in most or</p> <p>20 all of those board meetings, but I don't remember</p> <p>21 that specifically.</p> <p>22 Q Okay. Do you know – do you know whether</p> <p>23 anybody who's copied on this email ever questioned</p> <p>24 any aspect of the last sentence of</p> <p>25 Mr. Waterhouse's email at any time prior to the</p>
<p>Page 100</p> <p>1 Dustin Norris</p> <p>2 sending of the final memo on October 23rd?</p> <p>3 A Not that I'm aware of.</p> <p>4 Q You didn't; isn't that right?</p> <p>5 A I don't know that I read it, but I didn't</p> <p>6 question it. If I – I either didn't read it or I</p> <p>7 didn't question it.</p> <p>8 Q Okay. So you have no recollection of ever</p> <p>9 asking Mr. Waterhouse what he meant by the last</p> <p>10 sentence of this email; correct?</p> <p>11 A No, I have no recollection.</p> <p>12 Q And you have no recollection of any</p> <p>13 recipient of this email asking Mr. Waterhouse what</p> <p>14 he meant by that last sentence; correct?</p> <p>15 A I don't remember.</p> <p>16 Q And you never told Mr. Waterhouse that you</p> <p>17 had no knowledge of him having covered this issue</p> <p>18 before the board?</p> <p>19 A You're wondering if I ever told him I had</p> <p>20 no knowledge?</p> <p>21 Q Yeah.</p> <p>22 A No, I never talked to him about that.</p> <p>23 Q And to the best of your knowledge, no</p> <p>24 recipient of this email ever challenged</p> <p>25 Mr. Waterhouse's statement in this last sentence;</p>	<p>Page 101</p> <p>1 Dustin Norris</p> <p>2 correct?</p> <p>3 A I don't know what the conversations were</p> <p>4 had between the others, but I have no knowledge of</p> <p>5 that.</p> <p>6 Q Okay.</p> <p>7 A And – and you've got – sorry. Go ahead.</p> <p>8 Q This email string is – is an email string</p> <p>9 devoted for the sole purpose of addressing</p> <p>10 questions posed by the retail board in connection</p> <p>11 with the 15(c) review; correct?</p> <p>12 A I believe so.</p> <p>13 Q Okay. Have you ever seen HCMFA's</p> <p>14 unaudited financial statements for June 30th,</p> <p>15 2020?</p> <p>16 A Yes.</p> <p>17 Q And do you know if those audited –</p> <p>18 unaudited financial statements included the</p> <p>19 amounts due and payable under the notes?</p> <p>20 A I – I think that – I – I don't</p> <p>21 remember, but I think our position is it's</p> <p>22 unclear, because the amounts don't agree to</p> <p>23 the – again, we have prior notes, we have these</p> <p>24 notes. The amounts don't line up.</p> <p>25 So it's – it's – the underlying</p>

<p>Page 102</p> <p>1 Dustin Norris</p> <p>2 backing is not provided. There's no footnotes.</p> <p>3 It's just a number that says due to HCMLP.</p> <p>4 Q Do you know – do you know – do you have</p> <p>5 any recollection as to the totality of HCMFA's</p> <p>6 liabilities as of June 30th, 2020?</p> <p>7 A Including this note? Or just this note?</p> <p>8 Q All – all liabilities. What's the bottom</p> <p>9 of the balance sheet?</p> <p>10 A I don't know. Do you have it? Do you</p> <p>11 want to pull it up?</p> <p>12 Q I don't.</p> <p>13 A Yeah, I don't remember.</p> <p>14 MR. RUKAVINA: Hey, John, it's</p> <p>15 approaching 12:15. Just whenever, you</p> <p>16 know –</p> <p>17 MR. MORRIS: Yeah. You know what?</p> <p>18 I was just about to change topics, so this</p> <p>19 is a good time.</p> <p>20 MR. RUKAVINA: Okay.</p> <p>21 MR. MORRIS: Why don't we stop</p> <p>22 here, and we'll come back at the top of</p> <p>23 the hour.</p> <p>24 MR. RUKAVINA: Excellent. Thank</p> <p>25 you.</p>	<p>Page 103</p> <p>1 Dustin Norris</p> <p>2 (Recess from 12:11 p.m. to 1:06 p.m. CST)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q Mr. Norris, Topic Number 9 relates to</p> <p>5 consent fees.</p> <p>6 Do you understand that?</p> <p>7 A I do.</p> <p>8 Q Do you have an understanding of what a</p> <p>9 "consent fee" is?</p> <p>10 A I do.</p> <p>11 Q Did you do anything to prepare for this</p> <p>12 particular topic?</p> <p>13 A I did.</p> <p>14 Q What did you do to prepare for this topic?</p> <p>15 A I discussed the consent fee with</p> <p>16 Mr. Dondero, with Mr. Rukavina, and with</p> <p>17 Mr. Sauter.</p> <p>18 Q Okay. Mr. Sauter has no personal</p> <p>19 knowledge of any consent fee that was paid in the</p> <p>20 spring of 2019; correct?</p> <p>21 A No.</p> <p>22 Q Okay. What's your understanding of what a</p> <p>23 "consent fee" is?</p> <p>24 A Generally or the specific consent fee</p> <p>25 in – that –</p>
<p>Page 104</p> <p>1 Dustin Norris</p> <p>2 Q Let's start generally.</p> <p>3 A Yeah. So a "consent fee" is a fee paid to</p> <p>4 a – paid to someone who's agreeing to amend terms</p> <p>5 or change the structure of the – of a document or</p> <p>6 a loan. In – in bank loan world, or loan world,</p> <p>7 if you are going to amend or extend or change the</p> <p>8 terms, typically there was a consent fee paid to</p> <p>9 those willing to consent.</p> <p>10 Those that have voted or consented</p> <p>11 receive a fee.</p> <p>12 Q Okay. And did HCMFA pay any consent fees</p> <p>13 in or around April or May 2019?</p> <p>14 A It began to pay consent fees in May</p> <p>15 of 2019, I believe.</p> <p>16 Q Okay. Are you looking at something as you</p> <p>17 prepare your answer?</p> <p>18 A Yeah. I'm looking at Topic Number 9 that</p> <p>19 says consent fee in April or May 2019.</p> <p>20 Q Okay. Thank you so much.</p> <p>21 And – and I think you testified that</p> <p>22 they began paying consent fees at around that</p> <p>23 time?</p> <p>24 A That's right.</p> <p>25 Q What do you mean by that?</p>	<p>Page 105</p> <p>1 Dustin Norris</p> <p>2 A Yeah. So the consent fee was related to</p> <p>3 the global allocation fund that converted from an</p> <p>4 open-end fund to a closed-end fund, and there was</p> <p>5 a 3 percent fee that would be paid to investors</p> <p>6 that, one, consented to the conversion from an</p> <p>7 open-end fund to a closed-end fund, but also held</p> <p>8 their investment through the conversion.</p> <p>9 The conversion was finalized in</p> <p>10 February of 2019, and the consent fee was an</p> <p>11 operational challenge because you had to determine</p> <p>12 who the investors were that voted yes and that</p> <p>13 held on to the conversion.</p> <p>14 So with that, the – the amounts that</p> <p>15 were paid, there was an operational challenge to</p> <p>16 determine who – who needed to be paid, and so</p> <p>17 they were deposited and then paid out over a</p> <p>18 couple-month period.</p> <p>19 Q And who made the decision to pay the</p> <p>20 consent fee?</p> <p>21 A So the consent fee was a collaborative</p> <p>22 decision of senior management. Jim Dondero and</p> <p>23 myself were involved in the decision, the</p> <p>24 discussion to – and it was a novel idea in terms</p> <p>25 of converting from an open-end fund to a</p>

<p>Page 106</p> <p>1 Dustin Norris</p> <p>2 closed-end fund, and it was submitted to</p> <p>3 investors. It went through SEC review as a proxy</p> <p>4 statement, and it went out to shareholders who</p> <p>5 needed to vote for the proposal.</p> <p>6 Q And who paid the consent fee? HCMFA?</p> <p>7 A My understanding is HCMFA as the adviser</p> <p>8 of the global allocation fund paid the consent fee</p> <p>9 to investors.</p> <p>10 Q And whose idea was it to seek consent to</p> <p>11 change from an open fund to a closed-end fund?</p> <p>12 A I – I would say it was collaborative of</p> <p>13 senior management. Jim Dondero, myself, legal</p> <p>14 compliance was involved. It was, you know, Mark</p> <p>15 Okada, who was a partner at the time. There was a</p> <p>16 lot of discussion involved.</p> <p>17 Q And when the decision was made to seek</p> <p>18 consent to change from an open-end fund to a</p> <p>19 closed-end fund, did HCMFA understand that there</p> <p>20 would be costs, fees, and expenses associated with</p> <p>21 that decision?</p> <p>22 A Being cost fees as in the consent fee?</p> <p>23 Q Correct.</p> <p>24 A Yes.</p> <p>25 Q And did it undertake any analysis to</p>	<p>Page 107</p> <p>1 Dustin Norris</p> <p>2 determine what the likely total fee would be?</p> <p>3 A Yeah. I'm sure they did.</p> <p>4 Q Do you know what the total fee</p> <p>5 paid – what the total consent fee paid was?</p> <p>6 A I don't have the exact amount, but it was</p> <p>7 over \$5 million.</p> <p>8 Q Okay. And over what period of time were</p> <p>9 the consent fees paid?</p> <p>10 A I know they were paid in May and June, and</p> <p>11 there may be a portion that were paid thereafter,</p> <p>12 but at least May and June of 2019. There were</p> <p>13 certain broker-dealers that reported later, and</p> <p>14 when those were reported and verified, they were</p> <p>15 paid out. I don't remember the final date of the</p> <p>16 last distribution.</p> <p>17 Q Okay. And forgive me. It's not my</p> <p>18 business. But were the consent fees paid to the</p> <p>19 fund's shareholders?</p> <p>20 A They were paid to the shareholders.</p> <p>21 That's correct.</p> <p>22 Q Okay.</p> <p>23 A That's consented. The shareholders had to</p> <p>24 vote, and they had to be a shareholder on</p> <p>25 conversion date.</p>
<p>Page 108</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And the decision to seek and obtain</p> <p>3 consent, was that a voluntary decision by HCMFA?</p> <p>4 A To seek consent to move to a closed-end</p> <p>5 fund?</p> <p>6 Q Yes. That's not something that any</p> <p>7 regulator required, was it?</p> <p>8 A No.</p> <p>9 Q It's not something that any rule or</p> <p>10 anybody mandated; correct?</p> <p>11 A Not that I believe.</p> <p>12 Q Okay. How did HCMFA fund the payment of</p> <p>13 the total consent fee of over \$5 million?</p> <p>14 A Yeah, from cash that it had on the balance</p> <p>15 sheet.</p> <p>16 Q And where did it get the cash that was on</p> <p>17 the balance sheet?</p> <p>18 A The cash came from the transaction that we</p> <p>19 discussed earlier – and you showed the capital</p> <p>20 coming in from Highland – which was compensation</p> <p>21 for the NAV error.</p> <p>22 Q So it used the money that it received in</p> <p>23 the transfers that we talked about to pay the</p> <p>24 consent fee. Do I have that right? Or at least</p> <p>25 some of it?</p>	<p>Page 109</p> <p>1 Dustin Norris</p> <p>2 A Yes.</p> <p>3 Q And, in fact, it used approximately</p> <p>4 \$5 million of the moneys paid in May 2019 to pay</p> <p>5 the consent fee of approximately \$5 million; is</p> <p>6 that fair?</p> <p>7 A At least \$5 million.</p> <p>8 Q Okay. Do you know the exact number?</p> <p>9 A Of the consent fee?</p> <p>10 Q Withdrawn.</p> <p>11 Do you have a better or more precise</p> <p>12 estimate of the total consent fee other than</p> <p>13 \$5 million?</p> <p>14 A It was over \$5 million. I don't remember</p> <p>15 the exact amount, whether it was 5.6 or 5.2 –</p> <p>16 Q All right.</p> <p>17 A – because it was paid over time.</p> <p>18 Q Let's talk about the TerreStar valuation</p> <p>19 issue for a few minutes, if we can.</p> <p>20 A Okay.</p> <p>21 Q Just generally, in 2018/2019, HCMFA spent</p> <p>22 a fair amount of time addressing the consequences</p> <p>23 of a valuation error concerning TerreStar. Do I</p> <p>24 have that right?</p> <p>25 A There was a lot in there, but there was,</p>

<p>Page 110</p> <p>1 Dustin Norris</p> <p>2 during that time, a lot of discussions with</p> <p>3 TerreStar over the concerns of a valuation error</p> <p>4 in 2018 and '19.</p> <p>5 Q And did it ultimately turn out that there</p> <p>6 was a valuation error involving TerreStar?</p> <p>7 A There was.</p> <p>8 Q Okay. And had HCMFA retained Houlihan</p> <p>9 Lokey in connection with doing the TerreStar</p> <p>10 valuation?</p> <p>11 A Houlihan Lokey was involved in the</p> <p>12 valuation, yes.</p> <p>13 Q And who retained Houlihan Lokey?</p> <p>14 A I don't know.</p> <p>15 Q As you sit here right now, you can't tell</p> <p>16 me who retained Houlihan Lokey?</p> <p>17 A I don't know if it was HCMLP or HCMFA</p> <p>18 or – I don't know.</p> <p>19 Q Okay. Are you familiar with the firm</p> <p>20 Houlihan Lokey?</p> <p>21 A I am.</p> <p>22 Q And do you know what services they</p> <p>23 provided in connection with the TerreStar</p> <p>24 valuation?</p> <p>25 A I do.</p>	<p>Page 111</p> <p>1 Dustin Norris</p> <p>2 Q Can you describe for me the services that</p> <p>3 were provided by Houlihan Lokey in connection with</p> <p>4 the TerreStar –</p> <p>5 A And I would say I do generally. I was not</p> <p>6 involved in the individual details. That was all</p> <p>7 the HCMLP employees.</p> <p>8 So all of the Highland employees that</p> <p>9 were involved in the shared services agreement,</p> <p>10 the valuation committee, valuation services were</p> <p>11 the responsibility of HCMLP. Key inputs were</p> <p>12 provided by HCMLP. Key estimates and</p> <p>13 interpretations to Houlihan, and they used their</p> <p>14 models to calculate a valuation that was then</p> <p>15 approved by the valuation committee at HCMLP.</p> <p>16 And so that's my general understanding</p> <p>17 of the valuation process.</p> <p>18 Q Do you know how much Houlihan Lokey was</p> <p>19 paid for its work?</p> <p>20 A I don't.</p> <p>21 Q Do you know if there's an engagement</p> <p>22 letter pursuant to which Houlihan Lokey provided</p> <p>23 these services?</p> <p>24 A I'm not aware.</p> <p>25 Q Would you dispute that HCMFA is the entity</p>
<p>Page 112</p> <p>1 Dustin Norris</p> <p>2 that retained Houlihan Lokey?</p> <p>3 A I don't know.</p> <p>4 Q Would you agree that Houlihan Lokey is</p> <p>5 fairly described as an independent third-party</p> <p>6 valuation consultant?</p> <p>7 A Yes, generally.</p> <p>8 Q Okay. And do you know when Houlihan Lokey</p> <p>9 was retained?</p> <p>10 A I don't.</p> <p>11 Q Houlihan Lokey's retention was approved by</p> <p>12 the retail board, wasn't it?</p> <p>13 A I'm not sure.</p> <p>14 Q Have you ever seen any of the work product</p> <p>15 of Houlihan Lokey in connection with the TerreStar</p> <p>16 valuation?</p> <p>17 A Yeah. I remember seeing the valuation</p> <p>18 model.</p> <p>19 Q So Houlihan Lokey did prepare the</p> <p>20 valuation model that is the subject of the</p> <p>21 TerreStar valuation issue; is that fair?</p> <p>22 A Working very closely with the HCMLP</p> <p>23 employees with the inputs, yes.</p> <p>24 Q Did HCMFA rely on the Houlihan Lokey</p> <p>25 valuation model?</p>	<p>Page 113</p> <p>1 Dustin Norris</p> <p>2 A I'm not sure.</p> <p>3 Q Does HCMFA contend that Houlihan Lokey</p> <p>4 made any mistakes in connection with its valuation</p> <p>5 services?</p> <p>6 A I'm not sure.</p> <p>7 Q Does HCMFA have a position as to whether</p> <p>8 or not Houlihan Lokey made any mistakes in any of</p> <p>9 the services that it performed in connection with</p> <p>10 the TerreStar valuation?</p> <p>11 A I think they don't have details and would</p> <p>12 retain their rights to understand what their role</p> <p>13 and – sorry. What was the original question?</p> <p>14 Q Just whether HCMFA has a position as to</p> <p>15 whether or not Houlihan Lokey made any mistakes in</p> <p>16 the work that it did in connection with the</p> <p>17 TerreStar valuation?</p> <p>18 A Yeah. I think they're retaining their</p> <p>19 rights to understand that better.</p> <p>20 Q Is there any agreement with Houlihan Lokey</p> <p>21 that would give HCMFA the time to do that? Is</p> <p>22 there a tolling agreement or anything like that?</p> <p>23 A Not that I'm aware of.</p> <p>24 Q Is HCMFA undertaking any analysis to</p> <p>25 determine whether or not Houlihan Lokey made any</p>

<p>Page 114</p> <p>1 Dustin Norris</p> <p>2 mistakes in connection with the work that it did</p> <p>3 on the TerreStar valuation?</p> <p>4 A Sorry. One more time.</p> <p>5 Q Is HCMFA undertaking any analysis or</p> <p>6 investigation to try to determine whether Houlihan</p> <p>7 Lokey made any mistakes?</p> <p>8 A There are – I don't know. I don't know.</p> <p>9 Q You have no knowledge, as you sit here</p> <p>10 today, as to whether HCMFA is undertaking any</p> <p>11 analysis or investigation to try to determine</p> <p>12 whether Houlihan Lokey did anything wrong in</p> <p>13 connection with its valuation services; correct?</p> <p>14 A And I wasn't prepared – I don't think</p> <p>15 this is one of the topics – you know, Houlihan</p> <p>16 Lokey's, you know, involvement, and so I wasn't</p> <p>17 prepared to answer that one.</p> <p>18 Q Okay. Well, the defense – HCMFA's</p> <p>19 defense is that Highland is responsible for the</p> <p>20 TerreStar valuation issue; correct?</p> <p>21 A Yes.</p> <p>22 Q And there's no question that Houlihan</p> <p>23 Lokey provided services in connection with that</p> <p>24 valuation; correct?</p> <p>25 A Correct.</p>	<p>Page 115</p> <p>1 Dustin Norris</p> <p>2 Q But HCMFA has not undertaken any analysis</p> <p>3 or investigation, to the best of your knowledge,</p> <p>4 to try to determine if Houlihan Lokey was the</p> <p>5 responsible party; fair?</p> <p>6 A We don't know if there is a contract or</p> <p>7 not. At this point, we're talking about the</p> <p>8 defense of Highland's responsibility. There's no</p> <p>9 question they were responsible for the valuations.</p> <p>10 They were outsource provider of the valuation</p> <p>11 committee. Every individual working and</p> <p>12 coordinating with Houlihan Lokey was an HCMFA</p> <p>13 employee. All the data and information that was</p> <p>14 provided to them came from HCMLP. There's no</p> <p>15 question that Highland was responsible for the NAV</p> <p>16 error. No one ever questioned that. That was</p> <p>17 always known. It was all the employees that were</p> <p>18 involved.</p> <p>19 MR. RUKAVINA: John, I'll just</p> <p>20 reiterate that we did not understand your</p> <p>21 topics to include Houlihan Lokey. If you</p> <p>22 need more information about that or if we</p> <p>23 need to have a supplemental deposition,</p> <p>24 that's fine. But this is just not</p> <p>25 something that we reasonably anticipated</p>
<p>Page 116</p> <p>1 Dustin Norris</p> <p>2 you asking about.</p> <p>3 MR. MORRIS: I think it's – I</p> <p>4 think I have the answer that I need and</p> <p>5 that the executive vice president and</p> <p>6 30(b)(6) witness has no knowledge of any</p> <p>7 investigation or analysis that has been</p> <p>8 undertaken by HCMFA to try to even</p> <p>9 determine whether Houlihan Lokey is at</p> <p>10 fault.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q Do I have that right, Mr. Norris?</p> <p>13 MR. RUKAVINA: Well, I will just</p> <p>14 object that that was not your prior</p> <p>15 question.</p> <p>16 MR. MORRIS: All right. Well,</p> <p>17 that's my question now.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q Is that correct, Mr. Norris?</p> <p>20 A I know there's been discussion with</p> <p>21 counsel.</p> <p>22 MR. RUKAVINA: Well, I will</p> <p>23 represent to you that we have looked for a</p> <p>24 Houlihan Lokey contract and have not been</p> <p>25 able to find one. Otherwise, we would</p>	<p>Page 117</p> <p>1 Dustin Norris</p> <p>2 have produced it to you. So if you have</p> <p>3 anything like that, we'd love to see it.</p> <p>4 We do not even know whether we had a</p> <p>5 contract with Houlihan Lokey or not. So</p> <p>6 we'll try to find you information, John.</p> <p>7 We just – we just don't have it.</p> <p>8 MR. MORRIS: We'll get to that in a</p> <p>9 moment.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q Has HCMFA – withdrawn.</p> <p>12 Has HCMFA ever told Houlihan Lokey</p> <p>13 that it believed it made any mistake or error of</p> <p>14 any kind in connection with its work on the</p> <p>15 TerreStar valuation?</p> <p>16 A Again, I – this is not a topic that we</p> <p>17 reviewed, so I don't know.</p> <p>18 Q Okay. You're not aware of anything today;</p> <p>19 correct?</p> <p>20 A Again, the employees working with Houlihan</p> <p>21 Lokey were the HCMLP employees. So I don't know</p> <p>22 if the debtor employees have that conversation,</p> <p>23 but –</p> <p>24 MR. MORRIS: Yeah, I'm going to</p> <p>25 move to strike.</p>

<p>Page 118</p> <p>1 Dustin Norris</p> <p>2 BY MR. MORRIS:</p> <p>3 Q And I'm asking about HCMFA.</p> <p>4 Did – has HCMFA ever informed</p> <p>5 Houlihan Lokey that HCMFA believes that Houlihan</p> <p>6 Lokey made a mistake or error in the work that it</p> <p>7 did?</p> <p>8 A There were ongoing discussions extensively</p> <p>9 throughout this with Houlihan Lokey and the debtor</p> <p>10 employees regarding the error and what the causes</p> <p>11 were. It was extensive discussions.</p> <p>12 MR. MORRIS: Okay. Move to strike.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Has HCMFA ever told Houlihan Lokey that</p> <p>15 HCMFA believes that Houlihan Lokey made a mistake</p> <p>16 or an error in connection with its valuation</p> <p>17 services?</p> <p>18 A It may have, but I'm not aware.</p> <p>19 Q Thank you.</p> <p>20 Are you familiar with the report that</p> <p>21 HCMFA prepared and sent to the Global Allocation</p> <p>22 Fund concerning the TerreStar valuation issues?</p> <p>23 A They sent to the fund?</p> <p>24 Q Uh-huh.</p> <p>25 A What do you mean "they sent to the fund"?</p>	<p>Page 119</p> <p>1 Dustin Norris</p> <p>2 Q They sent to the board of the fund?</p> <p>3 A Oh, the board of the fund.</p> <p>4 There were a number of memos and</p> <p>5 presentations. If you have one you want to pull</p> <p>6 up, you can – we can refer to it.</p> <p>7 Q Sure.</p> <p>8 MR. MORRIS: Let's put up what</p> <p>9 we've marked as Exhibit 182.</p> <p>10 (Exhibit 182 tendered.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q And while we're doing that, have you ever</p> <p>13 seen a single document anywhere at any time in</p> <p>14 which any representative of HCMFA took Highland to</p> <p>15 task for the work that it did in connection with</p> <p>16 the TerreStar valuation?</p> <p>17 A "Took them to task"? Define "take them to</p> <p>18 task."</p> <p>19 Q Told them that they were the source and</p> <p>20 cause of the NAV error.</p> <p>21 A The irony of all of the reporting to the</p> <p>22 board, all of the valuation knowledge was from</p> <p>23 HCMLP's employees. We – we outsourced that to</p> <p>24 them. There was – there was no question that</p> <p>25 they were at fault, and that's – every employee</p>
<p>Page 120</p> <p>1 Dustin Norris</p> <p>2 involved was an HCMLP employee.</p> <p>3 MR. MORRIS: I move to strike.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q And I'm going to ask you, sir, to listen</p> <p>6 carefully to my question.</p> <p>7 Have you ever seen a document that</p> <p>8 HCMFA sent to Highland in which HCMFA accused</p> <p>9 Highland of being the cause of the NAV error?</p> <p>10 A I have not.</p> <p>11 Q Thank you.</p> <p>12 Do you see the document that's on the</p> <p>13 screen?</p> <p>14 A I do.</p> <p>15 Q Before I get to that, so the NAV error</p> <p>16 occurred sometime prior to May 2019; correct?</p> <p>17 A Beginning – I don't know the specific</p> <p>18 dates. I believe it began in May of 2019 –</p> <p>19 sorry. May 2019 –</p> <p>20 Q That's when it ended; right?</p> <p>21 A What's that?</p> <p>22 Q That's when it ended; right? That's –</p> <p>23 A Yeah, it was before May 2019.</p> <p>24 Q Okay. So during the entire time that the</p> <p>25 TerreStar NAV error was being discussed and</p>	<p>Page 121</p> <p>1 Dustin Norris</p> <p>2 analyzed and debated and communications with the</p> <p>3 SEC, during that entire period, Jim Dondero was in</p> <p>4 control of both HCMFA and Highland; correct?</p> <p>5 A Yes, I believe so.</p> <p>6 Q Okay. Can you identify any employee of</p> <p>7 Highland who was fired as a result of any of the</p> <p>8 mistakes that were made in connection with the</p> <p>9 TerreStar valuation?</p> <p>10 A No.</p> <p>11 Q Can you identify –</p> <p>12 A Not that I can remember.</p> <p>13 Q Can you identify any steps that</p> <p>14 Mr. Dondero took against any employee who was</p> <p>15 allegedly involved in the NAV error?</p> <p>16 A That would have been an HCMLP matter. I</p> <p>17 don't have any knowledge of HCMLP's hiring or</p> <p>18 firing practices.</p> <p>19 Q Okay. So at no time did anybody ever tell</p> <p>20 you that any disciplinary measures were imposed</p> <p>21 upon any Highland employee as a result of the NAV</p> <p>22 error that Highland allegedly caused; correct?</p> <p>23 A Any firing practice? Is that what you</p> <p>24 said?</p> <p>25 Q Disciplinary. Firing. Anything.</p>

<p>Page 122</p> <p>1 Dustin Norris</p> <p>2 A There was a remediation process that had</p> <p>3 to go into effect, which was improvement of</p> <p>4 controls, and they maybe even hired additional</p> <p>5 people. But it was – and I don't – I'm not</p> <p>6 aware of any disciplinary, but there could have</p> <p>7 been.</p> <p>8 Q Okay. But that would just be speculation</p> <p>9 on your part; correct?</p> <p>10 A Yeah.</p> <p>11 Q So have you seen the document that's up on</p> <p>12 the screen?</p> <p>13 A I have.</p> <p>14 Q Did you read it before it was sent?</p> <p>15 A I don't think so.</p> <p>16 Q Did anybody – did any officer or employee</p> <p>17 take responsibility for making sure that –</p> <p>18 withdrawn.</p> <p>19 What is this document?</p> <p>20 A It is titled "Resolution of the Funds Net</p> <p>21 Asset Value Error."</p> <p>22 Q And was – is it your understanding that</p> <p>23 the purpose of this document was to enable HCMFA</p> <p>24 to explain to the Global Allocation Fund how the</p> <p>25 resolution of the NAV error was being conducted?</p>	<p>Page 123</p> <p>1 Dustin Norris</p> <p>2 A Not to the Global Allocation Fund. This</p> <p>3 is a memo to the board.</p> <p>4 Q Thank you for the clarification.</p> <p>5 Subject to that clarification, is my</p> <p>6 description otherwise correct?</p> <p>7 A I believe so. There had been a number of</p> <p>8 communications with the board, and this is the</p> <p>9 resolution of the whole process, or most of the</p> <p>10 process.</p> <p>11 Q This was a pretty big issue for HCMFA,</p> <p>12 wasn't it?</p> <p>13 A There was a lot of people involved. It</p> <p>14 was – there was a lot of involvement from –</p> <p>15 mostly Highland Capital Management, LP, employees,</p> <p>16 but it was – there was a lot involved.</p> <p>17 Q And who – what outside counsel was</p> <p>18 retained?</p> <p>19 A Adviser counsel is counsel – is – I</p> <p>20 believe it was K&L Gates for HCMFA.</p> <p>21 Q And who was Highland's counsel?</p> <p>22 A I don't know.</p> <p>23 Q Do you know if Highland had counsel?</p> <p>24 A I don't know.</p> <p>25 Q Do you –</p>
<p>Page 124</p> <p>1 Dustin Norris</p> <p>2 A I know they had counsel they referred to</p> <p>3 for SEC matters, and I don't know if they utilized</p> <p>4 them here or not. They were all Highland</p> <p>5 employees that worked on this. So I'm sure you</p> <p>6 probably have that in your records.</p> <p>7 Q Sir, can you identify any outside counsel</p> <p>8 that was retained by Highland to advise it in</p> <p>9 connection with the TerreStar valuation issues</p> <p>10 that were the subject of an SEC investigation?</p> <p>11 A I have – I have no knowledge of that.</p> <p>12 Q Okay. Did you see this memo that's up on</p> <p>13 the screen that's been marked as Exhibit 182 prior</p> <p>14 to the time that it was sent?</p> <p>15 A I don't recall.</p> <p>16 Q The NAV error was the subject of an SEC</p> <p>17 investigation; correct?</p> <p>18 A Correct.</p> <p>19 Q Do you know if HCMFA ever told the SEC</p> <p>20 orally, in writing, or otherwise that Highland</p> <p>21 Capital Management, LP, was the cause of the NAV</p> <p>22 error?</p> <p>23 A Not that I'm aware of, but they were</p> <p>24 concerned about the ultimate correction of the NAV</p> <p>25 error. I don't think they were concerned about</p>	<p>Page 125</p> <p>1 Dustin Norris</p> <p>2 the responsible party.</p> <p>3 But I would say every single person</p> <p>4 that interacted with the SEC, I believe, were</p> <p>5 HCMLP employees. We can see that on the other</p> <p>6 memo that they have to the SEC following up on a</p> <p>7 call; all HCMLP employees. So whether they told</p> <p>8 them or not, they were all HCMLP employees.</p> <p>9 MR. MORRIS: Okay. Move to strike</p> <p>10 after the very first portion of the answer</p> <p>11 that was responsive.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Did anybody – did any officer or employee</p> <p>14 of HCMFA ever inform the SEC that Highland Capital</p> <p>15 Management, LP, was the responsible party for the</p> <p>16 NAV error?</p> <p>17 A Specifically, not that I'm aware of.</p> <p>18 Q Okay. Was any HCMFA officer or employee</p> <p>19 responsible for making sure that the memorandum up</p> <p>20 on the screen that's been marked as 182 was true</p> <p>21 and accurate before it was sent to the board of</p> <p>22 the Highland Global Allocation Fund?</p> <p>23 A I don't know that there is a – there's a</p> <p>24 specific requirement of an officer to verify the</p> <p>25 accuracy.</p>

<p>Page 126</p> <p>1 Dustin Norris</p> <p>2 Q Okay. But my question was a little bit</p> <p>3 broader, and that was whether there was any</p> <p>4 officer or employee who was given the</p> <p>5 responsibility of making sure this document was</p> <p>6 true and accurate before it was sent to the board</p> <p>7 of the GAF.</p> <p>8 A I don't even know who drafted this. It</p> <p>9 would have come from Highland's compliance legal</p> <p>10 and accounting team with all the expertise around</p> <p>11 the NAV error and all of those that were involved.</p> <p>12 Q So did you see this document at or around</p> <p>13 the time it was sent to the GAF board?</p> <p>14 A I probably did.</p> <p>15 Q Do you recall telling anybody at that time</p> <p>16 that you believed there were any errors in the</p> <p>17 document?</p> <p>18 A I think, as I testified before, I</p> <p>19 don't – I don't remember reading it. But I</p> <p>20 didn't – I didn't say there were errors in the</p> <p>21 document, no.</p> <p>22 Q Prior to the answer date of March 1st,</p> <p>23 2021, did anybody acting on behalf of HCMFA ever</p> <p>24 tell anybody in the world at any time that there</p> <p>25 was any error in this memorandum?</p>	<p>Page 127</p> <p>1 Dustin Norris</p> <p>2 A Not that I'm aware of.</p> <p>3 Q Did HCMFA send this memorandum –</p> <p>4 withdrawn.</p> <p>5 Did HCMFA intend this – withdrawn.</p> <p>6 Did HCMFA expect the GAF board to rely</p> <p>7 on this memorandum?</p> <p>8 A I don't know what the intention was.</p> <p>9 Q You don't know what HCMFA's intention was</p> <p>10 in sending this memorandum?</p> <p>11 A If it's addressed to the board, it could</p> <p>12 be to educate. But I'm sure that the board</p> <p>13 would – would rely on or expect that that memo</p> <p>14 would be accurate.</p> <p>15 Q Okay. And this is dated after all of the</p> <p>16 payments have been made that we've been talking</p> <p>17 about, the May 2nd and the May 3rd payments;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q Take a look at the second paragraph.</p> <p>21 A Yup.</p> <p>22 Q Do you see the first sentence refers to</p> <p>23 two initial determinations that were made by the</p> <p>24 adviser and Houlihan Lokey?</p> <p>25 A Sorry. Which part? Just the first</p>
<p>Page 128</p> <p>1 Dustin Norris</p> <p>2 sentence of the second paragraph?</p> <p>3 Q Yeah. First of all, do you see that the</p> <p>4 second paragraph refers to the adviser and</p> <p>5 Houlihan Lokey?</p> <p>6 A It does.</p> <p>7 Q And do you see that the reference to</p> <p>8 Houlihan Lokey includes a reference to Houlihan</p> <p>9 Lokey having been approved by the board?</p> <p>10 A Yes.</p> <p>11 Q And do you understand that that means the</p> <p>12 board of GAF?</p> <p>13 A Yes.</p> <p>14 Q Does that refresh your recollection that</p> <p>15 the GAF board approved of the retention of</p> <p>16 Houlihan Lokey as an independent third-party</p> <p>17 expert valuation consultant?</p> <p>18 A It doesn't refresh my recollection, but it</p> <p>19 says it there. I don't know that I have a</p> <p>20 document saying they – I haven't seen the</p> <p>21 approval, the agreement.</p> <p>22 Q But you don't dispute that this memo was</p> <p>23 sent to the GAF board on or about May 28th, 2019;</p> <p>24 correct?</p> <p>25 A Correct.</p>	<p>Page 129</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And HCMFA told the GAF board at</p> <p>3 that time that HCMFA and Houlihan Lokey, quote,</p> <p>4 "initially determined that the March transactions</p> <p>5 were non-orderly and should be given zero</p> <p>6 weighting for purposes of fair value."</p> <p>7 Is that correct?</p> <p>8 A The HCMFP, as part of the valuation – or</p> <p>9 as the outsource valuation provider, were the</p> <p>10 employees that made that determination. The</p> <p>11 adviser ultimately has the responsibility, but it</p> <p>12 was outsourced. And those were HCMFP employees,</p> <p>13 along with Houlihan Lokey, that determined the</p> <p>14 March transactions were non-orderly.</p> <p>15 MR. MORRIS: I'm going to move to</p> <p>16 strike.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q And I'm going to ask you to listen</p> <p>19 carefully to my question.</p> <p>20 I'm asking you what HCMFA told the GAF</p> <p>21 board. Did HCMFA tell the GAF board on May 28th,</p> <p>22 2019, that HCMFA and Houlihan Lokey, quote,</p> <p>23 "initially determined that the March transactions</p> <p>24 were non-orderly and should be given zero</p> <p>25 weighting for purposes of determining fair value."</p>

<p style="text-align: right;">Page 130</p> <p>1 Dustin Norris</p> <p>2 Is that correct?</p> <p>3 A The – in the memo, it says that on this</p> <p>4 date, there were many other conversations probably</p> <p>5 around this date and on this date discussing the</p> <p>6 determinations and non-orderly and that it was the</p> <p>7 HCMLP employees, and the board knew that. They</p> <p>8 were very aware that it was the – the valuation</p> <p>9 control environment of HCMLP that determined these</p> <p>10 were non-orderly transactions.</p> <p>11 Q So this – so this report is inaccurate,</p> <p>12 according to you?</p> <p>13 A No. There's – there's just – your</p> <p>14 question was did they tell the board. There is a</p> <p>15 lot that we told the board outside of this memo.</p> <p>16 This memo does say advised from Houlihan Lokey.</p> <p>17 The adviser is ultimately responsible. But there</p> <p>18 was a lot of communication with the board –</p> <p>19 Q Okay.</p> <p>20 A – around this, that they knew exactly who</p> <p>21 was responsible for valuation as the board</p> <p>22 determining that these were market transactions</p> <p>23 and orderly or non-orderly.</p> <p>24 Q Okay. I want to focus on this memo,</p> <p>25 because this is the one that I have. And you'll</p>	<p style="text-align: right;">Page 131</p> <p>1 Dustin Norris</p> <p>2 agree with me that there's no reference to</p> <p>3 Highland Capital Management, LP, anywhere in this</p> <p>4 report; correct?</p> <p>5 A No, there's not, but the board knew that</p> <p>6 HCMLP was preparing the valuations.</p> <p>7 MR. MORRIS: All right. I move to</p> <p>8 strike after the word "no."</p> <p>9 BY MR. MORRIS:</p> <p>10 Q And it was the determination concerning</p> <p>11 whether or not it was orderly or non-orderly, and</p> <p>12 whether or not to use zero weighting that were the</p> <p>13 two causes of the NAV error; correct?</p> <p>14 A Those were key portions.</p> <p>15 Q In the last sentence, in fact, that's the</p> <p>16 only portions; isn't that fair?</p> <p>17 A "Initially determined" – well, it doesn't</p> <p>18 say that there's not other factors. They're the</p> <p>19 only ones mentioned.</p> <p>20 Q Let me – let me – let me read the last</p> <p>21 sentence.</p> <p>22 Quote: "The orderly determination and</p> <p>23 adoption of the weighted fair value methodology</p> <p>24 resulted in NAV errors in the fund," and that's</p> <p>25 what it's defining as the NAV error.</p>
<p style="text-align: right;">Page 132</p> <p>1 Dustin Norris</p> <p>2 Have I read that correctly?</p> <p>3 A You did.</p> <p>4 Q And so would you agree with me, as HCMFA's</p> <p>5 30(b)(6) witness, that on May 28th, 2019, HCMFA</p> <p>6 told the GAF board that the two causes of the NAV</p> <p>7 error were the orderly determination and the</p> <p>8 adoption of the weighted fair value methodology –</p> <p>9 fair value – fair valuation methodology?</p> <p>10 A Those were – it doesn't say those are</p> <p>11 exclusively the only factors, but those are</p> <p>12 mentioned here.</p> <p>13 Q It says those two factors resulted in the</p> <p>14 NAV error; correct?</p> <p>15 A Those – no, it didn't say "the NAV</p> <p>16 error." It said "in NAV errors."</p> <p>17 Q Which it's defining as the NAV error;</p> <p>18 correct?</p> <p>19 A Defines as "the NAV error."</p> <p>20 Q Okay. Does HCMFA contend that there's</p> <p>21 anything in this paragraph that is inaccurate?</p> <p>22 A Again, I – I don't know that Houlihan</p> <p>23 Lokey was approved by the board, but I don't know</p> <p>24 of any other contention.</p> <p>25 Q Okay. And you don't – and HCMFA doesn't</p>	<p style="text-align: right;">Page 133</p> <p>1 Dustin Norris</p> <p>2 dispute that Houlihan Lokey was approved by the</p> <p>3 board. You're just telling me that, as you sit</p> <p>4 here today, that's the one fact that you've not</p> <p>5 been able to confirm; is that fair?</p> <p>6 A As far as I know, yeah.</p> <p>7 Q Okay. Let's go on to the next paragraph.</p> <p>8 MR. MORRIS: If we could just</p> <p>9 scroll up a little bit.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q I'm going to try and summarize here, but</p> <p>12 if you don't think it's a fair summary, of course</p> <p>13 I would encourage you to let me know.</p> <p>14 Is it fair to say that, as a general</p> <p>15 matter, the next paragraph describes a total loss</p> <p>16 from the NAV error as being approximately</p> <p>17 \$7.5 million?</p> <p>18 A Yeah, including processing costs and</p> <p>19 rebates and offsets, yes.</p> <p>20 Q Right. That's what the parenthetical</p> <p>21 says, a total loss –</p> <p>22 A Yup.</p> <p>23 Q – of approximately \$7.5 million?</p> <p>24 A Correct.</p> <p>25 Q And the next paragraph states that that</p>

<p>Page 134</p> <p>1 Dustin Norris</p> <p>2 loss was funded with two payments. Do I have that</p> <p>3 correct in the first sentence?</p> <p>4 A Correct.</p> <p>5 Q Okay. Did HCMFA pay approximately</p> <p>6 \$5.186 million on or around February 15, 2019, in</p> <p>7 connection with the NAV error?</p> <p>8 A I believe so.</p> <p>9 And if we go to the next page, it has</p> <p>10 dates and payments. I think it's represented</p> <p>11 there.</p> <p>12 Q Okay. Where did HCMFA get the money to</p> <p>13 make that payment?</p> <p>14 A A combination of insurance proceeds and</p> <p>15 cash that it had. And, again, that's detailed, I</p> <p>16 believe, on the next page.</p> <p>17 Q HCMFA contends that the \$7.4 million</p> <p>18 transferred by Highland to HCMFA was mistakenly</p> <p>19 recorded as a loan; correct?</p> <p>20 A There's – there's two different amounts</p> <p>21 that we contend were recorded as a note, a</p> <p>22 combined 7.4 million, yes.</p> <p>23 Q Okay. And HCMFA contends that the</p> <p>24 \$7.4 million in payments was not to be a loan, but</p> <p>25 was supposed to be compensation for Highland's</p>	<p>Page 135</p> <p>1 Dustin Norris</p> <p>2 negligent valuation services in connection with</p> <p>3 the NAV error; correct?</p> <p>4 A Sorry. One more time.</p> <p>5 Q HCMFA contends that the \$7.4 million in</p> <p>6 payments was supposed to be compensation resulting</p> <p>7 from Highland's negligent valuation services;</p> <p>8 correct?</p> <p>9 A Yes, subject to all of our defenses that</p> <p>10 we've laid out in our pleadings.</p> <p>11 Q Okay. When did HCMFA reach the conclusion</p> <p>12 that Highland was the cause of the NAV error?</p> <p>13 A The – there was never – I don't think</p> <p>14 there was ever a question. It was always known</p> <p>15 that HCMLP employees were the ones creating the</p> <p>16 valuation, overseeing the valuation, working with</p> <p>17 the value – you know, everything that was done</p> <p>18 was outsourced to HCMLP.</p> <p>19 And so it was discussed with the</p> <p>20 board. It was discussed in-depth internally. The</p> <p>21 employees were all HCMLP employees. So I can't</p> <p>22 pinpoint a date, but there – it was a known</p> <p>23 factor that HCMLP was responsible.</p> <p>24 MR. MORRIS: Okay. I move to</p> <p>25 strike.</p>
<p>Page 136</p> <p>1 Dustin Norris</p> <p>2 BY MR. MORRIS:</p> <p>3 Q The only thing I'm asking you for is a</p> <p>4 date. And if you don't know, the answer is "I</p> <p>5 don't know." So let me try one more time.</p> <p>6 Do you know when HCMFA first</p> <p>7 determined that Highland was negligent?</p> <p>8 A I don't know the first date.</p> <p>9 Q Do you know if it was in 2018 or 2019?</p> <p>10 A I don't know.</p> <p>11 Q Do you know when the NAV error first –</p> <p>12 was first identified?</p> <p>13 A I believe the NAV error was determined in</p> <p>14 early 2019.</p> <p>15 Q Was it before or after – I mean, the –</p> <p>16 the NAV error must have been identified before</p> <p>17 February 15, 2019; correct?</p> <p>18 A Correct.</p> <p>19 Q Okay.</p> <p>20 A Well, I should say whether there – I</p> <p>21 don't know. I don't remember – we'll have to</p> <p>22 look through the documents – what the actual –</p> <p>23 oh, you're saying before February 15th. Yes,</p> <p>24 that's when the paid insurance proceeds came in.</p> <p>25 So yes.</p>	<p>Page 137</p> <p>1 Dustin Norris</p> <p>2 Q No question – no question that HCMFA knew</p> <p>3 before February 15, 2019, that there was a NAV</p> <p>4 error; correct?</p> <p>5 A Correct.</p> <p>6 Q No question that HCMFA knew before</p> <p>7 February 15, 2019, that the NAV error was caused</p> <p>8 by Highland; correct?</p> <p>9 A Yeah. Like I said, it was always known</p> <p>10 that these were Highland employees that were</p> <p>11 outsourced through the valuation, and they were</p> <p>12 the ones at fault.</p> <p>13 Q Okay. Do you know if – if HCMFA ever</p> <p>14 demanded compensation from Highland for any errors</p> <p>15 or mistakes it may have made in connection with</p> <p>16 the TerreStar valuation?</p> <p>17 A Yeah. Mr. Dondero told Frank to make the</p> <p>18 payments to compensate for the NAV error.</p> <p>19 Q And did he do that in his capacity as the</p> <p>20 person in control of HCMFA, or did he do that in</p> <p>21 his capacity as the person in control of Highland?</p> <p>22 A I would imagine it would have been both.</p> <p>23 Further supported, he transferred money – of his</p> <p>24 own money to HCMLP to then pay HCMFA. And so</p> <p>25 he – yes, he was on both sides of it, but he had</p>

<p style="text-align: right;">Page 138</p> <p>1 Dustin Norris</p> <p>2 the authority on both sides to make that decision.</p> <p>3 Q Okay. And so Mr. Dondero reached an</p> <p>4 agreement with himself pursuant to which HCMFA</p> <p>5 demanded and Highland agreed to pay the</p> <p>6 \$7.4 million as a consequence of Highland's</p> <p>7 negligent conduct in the performance of its</p> <p>8 valuation services. Do I have that right?</p> <p>9 A Sounds like there's a legal determination</p> <p>10 there that needs to be made. I --</p> <p>11 Q It's a factual one, I promise.</p> <p>12 A Entering -- whether entering into an</p> <p>13 agreement or not, I -- that seems like a legal</p> <p>14 determination. But maybe ask the question again.</p> <p>15 Q Did somebody on behalf of Highland agree</p> <p>16 to pay HCMFA \$7.4 million in order to compensate</p> <p>17 HCMFA for Highland's negligent services in</p> <p>18 connection with the TerreStar valuation?</p> <p>19 A Yes. Mr. Dondero.</p> <p>20 Q Thank you.</p> <p>21 Is there any document anywhere that</p> <p>22 you have ever seen that reflects Highland's</p> <p>23 agreement to pay \$7.4 million as compensation to</p> <p>24 HCMFA?</p> <p>25 A I haven't seen a settlement agreement or</p>	<p style="text-align: right;">Page 139</p> <p>1 Dustin Norris</p> <p>2 an agreement to that effect, no.</p> <p>3 Q You haven't seen anything; correct?</p> <p>4 A No.</p> <p>5 Q Have you looked?</p> <p>6 A We have. I actually wouldn't be</p> <p>7 surprised -- I would be surprised to see one. And</p> <p>8 it's -- my understanding is -- and the company's</p> <p>9 position is that there doesn't need to be an</p> <p>10 agreement. Right? We --</p> <p>11 Q I'm not asking -- I'm going to interrupt</p> <p>12 you again. I'm not asking you --</p> <p>13 MR. RUKAVINA: Well, John --</p> <p>14 MR. MORRIS: -- anything like that.</p> <p>15 I need him to answer my questions or we're</p> <p>16 going to be here all night.</p> <p>17 MR. RUKAVINA: John, hold on.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q Have you ever -- have you ever seen</p> <p>20 anything --</p> <p>21 MR. RUKAVINA: John, hold on. Hold</p> <p>22 on.</p> <p>23 MR. MORRIS: No, no. Davor,</p> <p>24 please -- please --</p> <p>25 MR. RUKAVINA: John, it is not our</p>
<p style="text-align: right;">Page 140</p> <p>1 Dustin Norris</p> <p>2 position -- it is not -- it is our</p> <p>3 position that there is no settlement</p> <p>4 agreement.</p> <p>5 MR. MORRIS: Thank you very much.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q Is it your position that there is any</p> <p>8 document of any kind that reflects Highland's</p> <p>9 agreement to pay \$7.4 million as compensation?</p> <p>10 A No. Subject to our defenses, but there's</p> <p>11 none.</p> <p>12 Q Did Mr. Dondero tell Mr. Waterhouse that</p> <p>13 the money that he was asking to be transferred</p> <p>14 from Highland to HCMFA be transferred as</p> <p>15 compensation for the NAV error?</p> <p>16 A Our position is that this was compensation</p> <p>17 for the NAV error, and that was discussed.</p> <p>18 Mr. Dondero told Frank. And I believe Frank even</p> <p>19 testified to that, and Mr. Dondero testified to</p> <p>20 that in their depositions.</p> <p>21 Q Okay. Now, you said that the February</p> <p>22 payment of over \$5 million was funded through</p> <p>23 insurance proceeds and cash.</p> <p>24 Do I have that right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 Dustin Norris</p> <p>2 Q And the cash portion was really just the</p> <p>3 deductible?</p> <p>4 A If you want to go to Page 2, we can look</p> <p>5 at the details.</p> <p>6 Q Sure. Sure.</p> <p>7 A I don't have it all by memory.</p> <p>8 Q That's fair.</p> <p>9 MR. MORRIS: Let's go to the next</p> <p>10 page.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q Looking at this, do the third and fourth</p> <p>13 lines refresh your recollection --</p> <p>14 A Yes.</p> <p>15 Q -- that the February payment was funded</p> <p>16 through insurance proceeds and an insurance</p> <p>17 deductible paid by the adviser?</p> <p>18 A Yes, I believe that's correct.</p> <p>19 Q Okay. And Topic Number 8 on the 30(b)(6)</p> <p>20 notice relates to the insurance claim; right?</p> <p>21 A Uh-huh.</p> <p>22 Q Okay. Did you do anything to familiarize</p> <p>23 yourself with the insurance claim?</p> <p>24 A I did.</p> <p>25 Q And what did you do to familiarize</p>

<p>Page 142</p> <p>1 Dustin Norris</p> <p>2 yourself with the insurance claim?</p> <p>3 A I discussed with DC and Davor the</p> <p>4 company's position on the insurance claim.</p> <p>5 Q Okay. I don't want to know what the</p> <p>6 company's position is. I want to know what the</p> <p>7 facts are.</p> <p>8 Did you learn any facts in connection</p> <p>9 with your diligence and your preparation to answer</p> <p>10 topic – questions on Topic Number 8?</p> <p>11 A Yeah. The HCMFA policy was – was – the</p> <p>12 HCMFA – HCMFA had an insurance policy with ICI</p> <p>13 Mutual; and based on the NAV error, the policy</p> <p>14 was – I don't know what the word is – was used</p> <p>15 to seek reimbursement for the NAV error.</p> <p>16 Q Okay. So –</p> <p>17 (Reporter discussion off the record.)</p> <p>18 BY MR. MORRIS:</p> <p>19 Q So did HCMFA file a claim for insurance</p> <p>20 coverage with ICI Mutual in connection with the</p> <p>21 NAV error?</p> <p>22 A The HCMLP employees, I believe, through</p> <p>23 Frank Waterhouse and his team, did that. They –</p> <p>24 they managed the insurance as part of the shared</p> <p>25 services agreement, and they filed with the</p>	<p>Page 143</p> <p>1 Dustin Norris</p> <p>2 insurance company –</p> <p>3 Q And – and the filing –</p> <p>4 A – on behalf of HCMFA.</p> <p>5 Q And the filing that was made, was that a</p> <p>6 claim that was made on behalf of HCMFA?</p> <p>7 A I believe so, yes.</p> <p>8 Q And did HCMFA authorize the filing of that</p> <p>9 claim?</p> <p>10 A Our position is that that – that is a</p> <p>11 valid claim from HCMFA.</p> <p>12 Q All right. Did HCMFA authorize the filing</p> <p>13 of the insurance claim?</p> <p>14 A I – I don't know.</p> <p>15 Q Did – has HCMFA ever told anybody at any</p> <p>16 time that the insurance claim was not authorized</p> <p>17 by HCMFA?</p> <p>18 A No.</p> <p>19 Q And HCMFA received almost \$5 million on</p> <p>20 account of the claim; right?</p> <p>21 A Correct.</p> <p>22 Q And HCMFA wanted to recover on its</p> <p>23 insurance claim; correct?</p> <p>24 A Yes.</p> <p>25 Q Did the claim – was the claim made in</p>
<p>Page 144</p> <p>1 Dustin Norris</p> <p>2 writing?</p> <p>3 A I believe so.</p> <p>4 Q Have you seen the claim?</p> <p>5 A I don't – I don't recall seeing the</p> <p>6 claim.</p> <p>7 Q In connection with the defense of this</p> <p>8 lawsuit and the preparation, have you made any</p> <p>9 efforts to identify the actual claim that was</p> <p>10 filed on behalf of HCMFA?</p> <p>11 MR. RUKAVINA: Let me interject –</p> <p>12 let – let me interject. And we can talk</p> <p>13 about this offline. We searched for that</p> <p>14 and could not find it. We suspect it</p> <p>15 might be in HCMLP's legal documents that</p> <p>16 we don't have access to, but we have and</p> <p>17 we continue to actively search for the</p> <p>18 claim itself. We have not been able to</p> <p>19 find it.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q Does HCMFA use an insurance broker?</p> <p>22 A I don't believe so for this. I think it's</p> <p>23 directly with ICI Mutual. And it – we – there's</p> <p>24 no broker, but it goes through HCMLP's employees.</p> <p>25 Frank Waterhouse would have been the one probably</p>	<p>Page 145</p> <p>1 Dustin Norris</p> <p>2 interacting with ICI Mutual.</p> <p>3 Q HCMFA and HCMLP broke up at the end of</p> <p>4 February; is that fair?</p> <p>5 A That's correct.</p> <p>6 Q At any time since the end of February, has</p> <p>7 HCMFA made any effort to obtain any information</p> <p>8 concerning this insurance claim from ICI Mutual?</p> <p>9 A I don't know where we got the source of –</p> <p>10 of the documents, but there – there was – they</p> <p>11 were searching for the ICI documents. I don't</p> <p>12 know if it came from ICI or another source.</p> <p>13 Q Anybody –</p> <p>14 A I don't –</p> <p>15 Q Anybody from HCMFA reach out to ICI Mutual</p> <p>16 for information relating to this insurance claim</p> <p>17 at any time?</p> <p>18 A I don't – not that I'm aware of.</p> <p>19 Q Okay.</p> <p>20 A They may have, but I don't know.</p> <p>21 Q Do you know when the claim was filed?</p> <p>22 A I don't. I – I don't. I – I think it</p> <p>23 may have been late 2018, but I'm not sure.</p> <p>24 Q And at the time HCMFA filed the claim for</p> <p>25 insurance, it had already formed the opinion that</p>

<p>Page 146</p> <p>1 Dustin Norris</p> <p>2 Highland Capital Management, LP, was the</p> <p>3 responsible party; correct?</p> <p>4 A I believe so, yes.</p> <p>5 Q Did HCMFA tell the insurance company that</p> <p>6 Highland Capital Management was the responsible</p> <p>7 party?</p> <p>8 A I'm not sure. Again, this was Highland</p> <p>9 employees that filled out the materials and was</p> <p>10 working with ICI. So I don't know if your</p> <p>11 employees notified them.</p> <p>12 Q So the total estimated loss was</p> <p>13 approximately \$7.5 million; right? That's the top</p> <p>14 number on the right?</p> <p>15 A Yes.</p> <p>16 Q Okay. And roughly two-thirds of that was</p> <p>17 financed through insurance proceeds that were</p> <p>18 received in February of 2019; correct?</p> <p>19 A Correct.</p> <p>20 Q And thereafter, it's HCMFA's contention</p> <p>21 that Highland paid it another \$7.4 million for</p> <p>22 purposes of providing compensation in connection</p> <p>23 with its negligent work on the – on the TerreStar</p> <p>24 valuation error; correct?</p> <p>25 A Yes, that's correct. And that lines up,</p>	<p>Page 147</p> <p>1 Dustin Norris</p> <p>2 7.4 million, with the net – net loss that's shown</p> <p>3 there, estimated loss.</p> <p>4 Q Right. So it's fair to say, then, from --</p> <p>5 that it's HCMFA's position that it received</p> <p>6 \$7.4 million from Highland as compensation, and</p> <p>7 approximately \$5 million from the insurance</p> <p>8 carrier as compensation for total receipts of</p> <p>9 \$12.4 million in connection with the NAV star --</p> <p>10 with the TerreStar valuation error?</p> <p>11 A Correct.</p> <p>12 Q Okay. Why would H- why does HCMFA</p> <p>13 contend that its entitled to \$12.4 million from</p> <p>14 Highland and the insurance company when the total</p> <p>15 loss was only \$7.4 million?</p> <p>16 A Yeah, it's -- it's our position that the</p> <p>17 collateral -- and I'm not an attorney. But</p> <p>18 understanding our position here, that under Texas</p> <p>19 law, the collateral source rule would permit you</p> <p>20 to recover value from the insurance company and to</p> <p>21 the individual or the -- the company that created</p> <p>22 the -- or caused you harm.</p> <p>23 Q So you're -- would you agree that HCMFA</p> <p>24 has profited by about \$5 million as a result of</p> <p>25 the NAV error under that theory?</p>
<p>Page 148</p> <p>1 Dustin Norris</p> <p>2 A I -- I don't know that -- how the theory</p> <p>3 relates to profits, but we've -- we've paid -- and</p> <p>4 say, "What's the logic for this?" We paid in</p> <p>5 insurance premiums for years, significant</p> <p>6 insurance premiums. And so there's been a loss</p> <p>7 for years and years for the insurance, and then</p> <p>8 we're now hitting that insurance to say there's a</p> <p>9 gain of \$5 million, whatever number you threw out.</p> <p>10 I would disagree with that.</p> <p>11 But, yes, there was proceeds of</p> <p>12 12-and-a-half million, but we've been paying in</p> <p>13 insurance proceeds or premiums for a long time.</p> <p>14 We're going to continue, and likely, I would</p> <p>15 imagine, those premiums will go up because of the</p> <p>16 claim.</p> <p>17 So I -- I'm, again, not a lawyer. I</p> <p>18 don't understand all the reasons why it's</p> <p>19 permitted. But our position is that the</p> <p>20 collateral source rule under Texas law permits you</p> <p>21 to receive from the insurance -- your insurance</p> <p>22 provider and from the party that did you harm.</p> <p>23 And as you said, here we believe it's negligence.</p> <p>24 It may be breach of contract, but we believe it's</p> <p>25 negligence.</p>	<p>Page 149</p> <p>1 Dustin Norris</p> <p>2 Q Okay. I just want to make this really</p> <p>3 clean.</p> <p>4 The estimated net loss from the NAV</p> <p>5 error is \$7.442 million; correct?</p> <p>6 A The estimated loss from the NAV error,</p> <p>7 yes.</p> <p>8 Q Okay. And notwithstanding that HCMFA</p> <p>9 believed that Highland was the responsible party,</p> <p>10 HCMFA, nevertheless, filed a claim for insurance</p> <p>11 coverage with ICI Mutual; correct?</p> <p>12 A That's correct.</p> <p>13 Q And ICI Mutual paid almost \$5 million in</p> <p>14 connection with that claim; correct?</p> <p>15 A Correct.</p> <p>16 Q And in addition to that almost \$5 million,</p> <p>17 it's HCMFA's position that it received and was</p> <p>18 entitled to receive an additional \$7.4 million</p> <p>19 from Highland as compensation for its error;</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q So that notwithstanding the fact that the</p> <p>23 estimated net loss was \$7.44 million, HCMFA</p> <p>24 received and contends that it's entitled to keep</p> <p>25 \$12.4 million; correct?</p>

<p style="text-align: right;">Page 150</p> <p>1 Dustin Norris</p> <p>2 A That's correct, subject to our defenses.</p> <p>3 Q Okay. Did – has – has HCMFA ever</p> <p>4 informed ICI Mutual that it received \$7.4 million</p> <p>5 from Highland on account of the NAV error?</p> <p>6 A Not that I'm aware of.</p> <p>7 Q Has HCMFA ever told ICI Mutual that</p> <p>8 Highland was at fault?</p> <p>9 A Again, I think I already answered that. I</p> <p>10 don't know. Communication with ICI was done by</p> <p>11 the HCMLP employees as part of the shared services</p> <p>12 agreement, and I'm not sure if they communicated</p> <p>13 that.</p> <p>14 MR. MORRIS: Okay. I move to</p> <p>15 strike.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q I just – I'm just asking for your</p> <p>18 knowledge, not speculation.</p> <p>19 Do you have any knowledge that anyone</p> <p>20 on behalf of HCMFA ever informed ICI Mutual that</p> <p>21 Highland was the cause of the NAV error?</p> <p>22 A I have no knowledge.</p> <p>23 MR. MORRIS: Let's take a short</p> <p>24 break. The time now is 3:06 – or 2:06.</p> <p>25 Let's just come back at 3:20.</p>	<p style="text-align: right;">Page 151</p> <p>1 Dustin Norris</p> <p>2 (Recess from 2:07 p.m. to 2:21 p.m. CST)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q So we were talking a bit about the</p> <p>5 insurance payment that was received in February</p> <p>6 of 2019. Do you remember that?</p> <p>7 A Yes.</p> <p>8 Q And there was a claim that was filed on</p> <p>9 behalf of HCMFA that resulted in that insurance</p> <p>10 proceed payment; correct?</p> <p>11 A Correct.</p> <p>12 Q And do you recall if that insurance claim</p> <p>13 was filed in 2018 or 2019?</p> <p>14 A I don't recall, but I believe it was late</p> <p>15 2018. But I don't know.</p> <p>16 Q Yeah.</p> <p>17 A And as we testified, we don't have that</p> <p>18 claim. We've searched for it. It's probably on</p> <p>19 your server, as I – Frank Waterhouse and his team</p> <p>20 would have submitted that.</p> <p>21 Q Yeah. But you haven't made any effort to</p> <p>22 get it from the carrier; right?</p> <p>23 A No, not that I know of.</p> <p>24 Q Okay. And would you agree with me that</p> <p>25 it's probably extremely unlikely that an insurance</p>
<p style="text-align: right;">Page 152</p> <p>1 Dustin Norris</p> <p>2 carrier would have processed a claim of that</p> <p>3 magnitude in six weeks?</p> <p>4 A I know they expedited it and they</p> <p>5 specialize in – sorry. I'll step back.</p> <p>6 I have no knowledge of how quick</p> <p>7 carriers make these claims –</p> <p>8 Q All right. Do you know –</p> <p>9 A Other than hail on my house – hail damage</p> <p>10 on my roof, I don't have personal knowledge of</p> <p>11 insurance claims.</p> <p>12 MR. MORRIS: You know, I apologize,</p> <p>13 but can I ask Ms. Canty to put back up on</p> <p>14 the screen that last exhibit that we had?</p> <p>15 I don't have the exhibit number.</p> <p>16 All right. And go to the prior</p> <p>17 page. And go to the bottom of that page.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q So we've put back up on the screen, I</p> <p>20 think –</p> <p>21 MS. CANTY: 182.</p> <p>22 MR. MORRIS: 182.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q All right. And do you see in the next to</p> <p>25 the last paragraph, Mr. Norris, there's a</p>	<p style="text-align: right;">Page 153</p> <p>1 Dustin Norris</p> <p>2 reference to a period from March 18, 2018, to</p> <p>3 January 19, 2019?</p> <p>4 A Yes.</p> <p>5 Q That's what they've defined as the NAV</p> <p>6 restatement period. Do you see that?</p> <p>7 A Yes, I do.</p> <p>8 Q Okay. Looking at that period, does that</p> <p>9 refresh your recollection at all as to when in</p> <p>10 2018 HCMFA first learned about the NAV error?</p> <p>11 A No, because that was – that was the</p> <p>12 period of time when the market – the off-market</p> <p>13 or on-market transactions happened, March 18th.</p> <p>14 Q Okay.</p> <p>15 A It was sometime in between that they found</p> <p>16 out that there was an error.</p> <p>17 Q Okay. And do you know if it was the first</p> <p>18 half of 2018 or the second half?</p> <p>19 A The midyear audits of some of our funds, I</p> <p>20 believe, is when it first came up.</p> <p>21 Q And –</p> <p>22 A So 6/30 audits that were due 60 days</p> <p>23 later. So second half – I believe second half of</p> <p>24 2018.</p> <p>25 Q So is it fair to say sometime in August or</p>

<p style="text-align: right;">Page 154</p> <p>1 Dustin Norris</p> <p>2 September is when HCMFA first learned about it?</p> <p>3 A About – define "it." Is that the NAV</p> <p>4 error.</p> <p>5 Q I apologize. Let me ask the question</p> <p>6 again.</p> <p>7 Is it fair to say, based on the timing</p> <p>8 of the audit, 60 days after June 30th would take</p> <p>9 us to approximately August 31st; right?</p> <p>10 A It does.</p> <p>11 Q And so is it fair to say, then, that HCMFA</p> <p>12 first learned about the NAV error sometime in</p> <p>13 August of 2018 while it was preparing the</p> <p>14 financials for the period ending June 30th?</p> <p>15 A No. I don't think there was a</p> <p>16 determination of whether there was a NAV error or</p> <p>17 not at that point. I think the reason they have</p> <p>18 going all the way to January 19 – 2019 is it</p> <p>19 wasn't determined – finalized if there is an</p> <p>20 error or not.</p> <p>21 There was a lot of discussion with the</p> <p>22 SEC and auditors over whether there was or wasn't</p> <p>23 an error, what the amount was, what the proper</p> <p>24 valuation should be. There was consultation with</p> <p>25 the SEC, and that process lasted, I believe,</p>	<p style="text-align: right;">Page 155</p> <p>1 Dustin Norris</p> <p>2 several weeks, if not months.</p> <p>3 So that is not when they found out</p> <p>4 about a NAV error, but the questions over</p> <p>5 valuation, yes.</p> <p>6 Q Okay. So then let me state the question</p> <p>7 differently then.</p> <p>8 Is it fair to say that HCMFA first</p> <p>9 learned in or about August 2018 of the valuation</p> <p>10 issues?</p> <p>11 A The "about" is key here. I don't know the</p> <p>12 specific date, but around that time or earlier –</p> <p>13 Q Okay.</p> <p>14 A – or later. On or around that time.</p> <p>15 Q And did HCMFA conclude, at the same time</p> <p>16 it learned of the valuation issues, that HCMFA was</p> <p>17 the responsible party? Or was there a gap between</p> <p>18 learning about the valuation issues and making the</p> <p>19 determination that Highland was the responsible</p> <p>20 party?</p> <p>21 A Yeah, first you said HCMFA was the</p> <p>22 responsible party, and then you said Highland.</p> <p>23 Q I apologize. Let me try and restate that.</p> <p>24 Did HCMFA conclude that Highland was</p> <p>25 the responsible party at or around the same time</p>
<p style="text-align: right;">Page 156</p> <p>1 Dustin Norris</p> <p>2 that it learned of the valuation issues, or was</p> <p>3 there a period during which it knew about the</p> <p>4 valuation issues, but not – had not yet formed</p> <p>5 the conclusion that Highland was the responsible</p> <p>6 party?</p> <p>7 A From the beginning, everybody knew who the</p> <p>8 responsible party was for the valuation. Those</p> <p>9 reporting the issues, those responding to</p> <p>10 auditors, those responding to SEC and the board</p> <p>11 were all HCMLP employees from the beginning. But</p> <p>12 I don't have a specific date.</p> <p>13 Again, as you look here, it doesn't</p> <p>14 say when the NAV error was determined, but from</p> <p>15 the beginning, it was the knowledge that HCMLP was</p> <p>16 responsible for the valuations.</p> <p>17 Q Okay. Do you know when HCMFA first</p> <p>18 determined that the estimated loss was</p> <p>19 approximately \$7.4 million?</p> <p>20 A I don't, no. I don't have specifics, but</p> <p>21 it was after there was a determination there was</p> <p>22 actually a NAV error. And it may be in some of</p> <p>23 the documents that you have. I believe it may be</p> <p>24 in, you know, a memo to the board or the SEC, but</p> <p>25 I don't know offhand.</p>	<p style="text-align: right;">Page 157</p> <p>1 Dustin Norris</p> <p>2 Q Do you know when there was a determination</p> <p>3 that there was a NAV error?</p> <p>4 A I don't know the specific time, no.</p> <p>5 Q Do you know if it was in 2019 or 2018?</p> <p>6 A I don't remember.</p> <p>7 Q Is it fair to say that it was before</p> <p>8 May of 2019?</p> <p>9 A That there was a determination there was a</p> <p>10 NAV error? Yes.</p> <p>11 Q And is it fair to say that HCMFA had</p> <p>12 concluded that the loss of that NAV error was</p> <p>13 going to be more than a million dollars prior to</p> <p>14 May 2019?</p> <p>15 A More than a million? Probably – yes.</p> <p>16 Q Okay. Is there a reason that HCMFA waited</p> <p>17 until May to have Highland pay it for the</p> <p>18 compensation?</p> <p>19 A I think that the whole process – as you</p> <p>20 see, the resolution memo is in May to the board.</p> <p>21 That was the conclusion of the overall process.</p> <p>22 So our stance would be that that was when it was</p> <p>23 the right time and everything was – the right</p> <p>24 time to be sent.</p> <p>25 MR. MORRIS: Okay. Can we put up</p>

<p>Page 158</p> <p>1 Dustin Norris</p> <p>2 on the screen a document that's been</p> <p>3 marked as, I think, as Exhibit 13? I</p> <p>4 don't know if you're able to get that,</p> <p>5 La Asia.</p> <p>6 MS. CANTY: Yup, I got it.</p> <p>7 MR. MORRIS: Thank you.</p> <p>8 (Exhibit 13 tendered.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Are you aware, sir, that there came a</p> <p>11 point in time when HCMFA amended its answer?</p> <p>12 A Yes.</p> <p>13 Q And I think topic –</p> <p>14 A Topic 2 is our amended answer.</p> <p>15 Q Okay. So that's the document that's in</p> <p>16 front of you?</p> <p>17 A Yes.</p> <p>18 Q And you've seen that before; correct?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 MR. MORRIS: Can we turn to Page 5</p> <p>22 of 9, please?</p> <p>23 And if we can scroll to the bottom.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q These are HCMFA's affirmative defenses; is</p>	<p>Page 159</p> <p>1 Dustin Norris</p> <p>2 that right?</p> <p>3 A On the second amended answer, yes.</p> <p>4 Q Yes.</p> <p>5 A I'm sorry. The first amended answer, yes.</p> <p>6 Q And as of today, is it your understanding</p> <p>7 that this is HCMFA's operative pleading?</p> <p>8 A No.</p> <p>9 Q Has it been amended after this time?</p> <p>10 A Yeah, we –</p> <p>11 MR. RUKAVINA: Well, he doesn't</p> <p>12 know what "operative pleading" means.</p> <p>13 THE WITNESS: Oh.</p> <p>14 MR. RUKAVINA: Yes, it is our</p> <p>15 operative pleading, Dustin.</p> <p>16 THE WITNESS: It is our operative</p> <p>17 pleading then.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q And I didn't mean to trick you. I</p> <p>20 apologize. I just meant to say that this has not</p> <p>21 been amended as of today; correct?</p> <p>22 A We filed a – wait. Let me see what it's</p> <p>23 called.</p> <p>24 Q You filed a motion for permission to amend</p> <p>25 it further –</p>
<p>Page 160</p> <p>1 Dustin Norris</p> <p>2 A Yes.</p> <p>3 Q – but that motion hasn't been granted;</p> <p>4 right?</p> <p>5 A To my understanding, no.</p> <p>6 Q Okay. And you understand that your – the</p> <p>7 answer that's up on the screen can't be amended</p> <p>8 unless the Court grants the motion; right?</p> <p>9 A I – if you tell me that that's the</p> <p>10 process, I'll take that for what it's worth. I'm</p> <p>11 not an attorney. I don't know the process.</p> <p>12 Q Okay. So let's just look at this</p> <p>13 document.</p> <p>14 Is it fair to say that Paragraph 38</p> <p>15 through 45 deals with –</p> <p>16 A I'm going to grab the –</p> <p>17 Q Yeah.</p> <p>18 A – thing here so I can see it on my desk,</p> <p>19 too.</p> <p>20 Q Sure.</p> <p>21 A Okay.</p> <p>22 38?</p> <p>23 Q Right.</p> <p>24 A Okay.</p> <p>25 Q Now – actually, a little background.</p>	<p>Page 161</p> <p>1 Dustin Norris</p> <p>2 This amended complaint was prepared</p> <p>3 after DC Sauter conducted an investigation</p> <p>4 concerning the circumstances surrounding the two</p> <p>5 notes that Highland was suing on; right?</p> <p>6 A Yes. My understanding is it is after</p> <p>7 he – so background, when he – we filed our</p> <p>8 initial response, we didn't have access to the</p> <p>9 HCMLP employees during that time period. They</p> <p>10 were not permitted to talk to us about things like</p> <p>11 this. And so he did the best he could to prepare</p> <p>12 a response. But once they were mostly all fired</p> <p>13 by HCMLP and formed their own company called</p> <p>14 Skyview, he was able to talk to them on</p> <p>15 particulars. As you note in his – his statement,</p> <p>16 he was able to talk to Frank Waterhouse, where he</p> <p>17 wasn't before, on this topic.</p> <p>18 Q Right. So by the time this document has</p> <p>19 been prepared, HCMFA had copies of the notes that</p> <p>20 Highland was suing on for six months; right?</p> <p>21 Because the lawsuit was commenced in January, and</p> <p>22 the notes were attached as exhibits to the</p> <p>23 complaint; right?</p> <p>24 A Yes. This is July 6th this is filed.</p> <p>25 Q Right. Okay. So this is filed almost six</p>

<p>Page 162</p> <p>1 Dustin Norris</p> <p>2 months after the complaint is filed; right?</p> <p>3 A More like a five-month – five months and</p> <p>4 a week, but yeah.</p> <p>5 Q All right. I won't quarrel with you.</p> <p>6 A Or five and a half – five and a half</p> <p>7 months, yeah.</p> <p>8 Q Okay.</p> <p>9 A Whether you consider that –</p> <p>10 Q Okay.</p> <p>11 A – six full months or not.</p> <p>12 Q So –</p> <p>13 A We know the dates January 22nd and</p> <p>14 July 6th.</p> <p>15 Q Okay. So for that entire time period of</p> <p>16 time, there's no dispute that HCMFA had in its</p> <p>17 possession copies of the notes that Highland was</p> <p>18 suing on; correct?</p> <p>19 A I'm looking at the original – you said</p> <p>20 they were attached, but I –</p> <p>21 Q Yeah.</p> <p>22 A If you want to show me the original notes</p> <p>23 on the original filing.</p> <p>24 Q Well, I asked you to look at the original</p> <p>25 complaint. I think – was the original complaint</p>	<p>Page 163</p> <p>1 Dustin Norris</p> <p>2 Topic Number 1? No. It's just the answer.</p> <p>3 In looking at the answer, did you look</p> <p>4 at the original complaint?</p> <p>5 A Yes.</p> <p>6 Q Do you recall seeing that the notes were</p> <p>7 attached to the original complaint?</p> <p>8 A I looked at thousands of pages in</p> <p>9 preparation, so I just – I could take your word</p> <p>10 for it if you say it's in there, or if you want to</p> <p>11 show it to me, we can look at it.</p> <p>12 MR. RUKAVINA: They are, Dustin.</p> <p>13 They are.</p> <p>14 MR. MORRIS: Yeah. I think you'll</p> <p>15 have to take my word for it. Thank you,</p> <p>16 Davor, for confirming my word.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q So let me just try this again to make it</p> <p>19 clean.</p> <p>20 Based on my representation, that</p> <p>21 Mr. Rukavina has agreed with, that the notes that</p> <p>22 Highland are suing on were attached to its</p> <p>23 complaint in January, you would agree with me that</p> <p>24 HCMFA had the notes in its possession from at</p> <p>25 least the time the complaint was filed until the</p>
<p>Page 164</p> <p>1 Dustin Norris</p> <p>2 time HCMFA filed this amended answer on July 6th;</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And this amended answer was filed because</p> <p>6 HCMFA had a – had previously made a motion to the</p> <p>7 Court for leave to amend its answer; correct?</p> <p>8 MR. RUKAVINA: That's correct,</p> <p>9 Dustin.</p> <p>10 He wouldn't know about that, but</p> <p>11 that's all correct.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Okay. Well, you're familiar with the</p> <p>14 Sauter declaration; right?</p> <p>15 A I am.</p> <p>16 Q And the Sauter declaration purports to</p> <p>17 describe an investigation that Mr. Sauter</p> <p>18 undertook to determine the circumstances</p> <p>19 surrounding the notes; is that fair?</p> <p>20 A I don't know if I'd characterize it</p> <p>21 investigation, but he was tasked with – and I've</p> <p>22 got it right here. I would refer you to the</p> <p>23 agreement on – or his – to his declaration on –</p> <p>24 Q How would you – how would you</p> <p>25 characterize the work that he did? An</p>	<p>Page 165</p> <p>1 Dustin Norris</p> <p>2 investigation? An analysis? What word do</p> <p>3 you – would you use? Due diligence? How would</p> <p>4 you characterize the work that Mr. Sauter did</p> <p>5 that's set forth in his declaration?</p> <p>6 A I – I'm looking here. I want to see how</p> <p>7 he characterizes it.</p> <p>8 I think he does a very good job of</p> <p>9 explaining.</p> <p>10 My investigation would be of the</p> <p>11 following. So he calls it an investigation.</p> <p>12 Q Okay. So HCMFA would agree that after</p> <p>13 Mr. Waterhouse left the employ of Highland, that</p> <p>14 DC Sauter conducted an investigation into the</p> <p>15 circumstances surrounding the notes that Highland</p> <p>16 was suing on; correct?</p> <p>17 A Correct.</p> <p>18 Q And as part of that investigation, he</p> <p>19 spoke with Mr. Waterhouse; correct?</p> <p>20 A Yes.</p> <p>21 Q And as part of that investigation, he</p> <p>22 spoke with Mr. Dondero; correct?</p> <p>23 A I believe so, but let me – let me confirm</p> <p>24 in his statement.</p> <p>25 Because I believe in – yeah.</p>

<p style="text-align: right;">Page 166</p> <p>1 Dustin Norris</p> <p>2 Q Is that correct, that he spoke with</p> <p>3 Mr. Dondero in connection with his investigation?</p> <p>4 A I'm – I'm seeing what he rep'd to in his</p> <p>5 statement.</p> <p>6 Q And does his statement say that? I don't</p> <p>7 have it in front of me.</p> <p>8 A I don't know. That's what I'm looking at.</p> <p>9 Q And you don't know, independently of the</p> <p>10 document, whether Mr. Sauter spoke with</p> <p>11 Mr. Dondero as part of his investigation?</p> <p>12 A I know he did. I know he talked</p> <p>13 throughout from when we received the original</p> <p>14 complaint on. I just – you're asking about the</p> <p>15 time frame between filing the original filing.</p> <p>16 And I think he may have spoken with him before</p> <p>17 that, too, but I – I just want to take a...</p> <p>18 So at the time – this is on</p> <p>19 March 1st, filed the defendant's original answer.</p> <p>20 At that – at the time the debtor filed a</p> <p>21 complaint, I promptly undertook an internal review</p> <p>22 of the background facts concerning the notes. I</p> <p>23 had no knowledge of them since I had not been</p> <p>24 employed by HCMFA. And a few employees of HCMLP</p> <p>25 had no knowledge of notes. I also discussed the</p>	<p style="text-align: right;">Page 167</p> <p>1 Dustin Norris</p> <p>2 notes of James Dondero, formerly the CEO of the</p> <p>3 debtor, Mr. Dondero.</p> <p>4 So this is March 1st when that first</p> <p>5 filing was made. So he did speak with Mr. Dondero</p> <p>6 prior, and then I believe the source of the</p> <p>7 additional information was being able to speak</p> <p>8 with Frank Waterhouse and Will Mabry.</p> <p>9 Q Okay. And is it fair to say that the</p> <p>10 amended complaint is based on Mr. Sauter's</p> <p>11 investigation?</p> <p>12 A Yes, I believe so.</p> <p>13 Q Yeah.</p> <p>14 A Yes.</p> <p>15 Q That's why HCMFA amended its complaint.</p> <p>16 It's because Mr. Sauter had undertaken this</p> <p>17 investigation, and he learned what he believed</p> <p>18 were relevant facts, and those facts are described</p> <p>19 in his declaration, and they formed the basis of</p> <p>20 the affirmative defenses that we're looking at now</p> <p>21 in the amended answer, fair?</p> <p>22 A Let me pull up the amended answer just</p> <p>23 to –</p> <p>24 Q It's up on the screen, but if you have a</p> <p>25 hard copy, that's fine.</p>
<p style="text-align: right;">Page 168</p> <p>1 Dustin Norris</p> <p>2 A Yeah. I have a hard copy here, although I</p> <p>3 may have mixed my documents.</p> <p>4 Yeah, it was based on additional facts</p> <p>5 that weren't available at the time of the original</p> <p>6 response.</p> <p>7 Q Okay. And is it fair to say that</p> <p>8 Paragraphs 38 through 45 relate to the affirmative</p> <p>9 defense that Highland was responsible for the NAV</p> <p>10 error, and the \$7.4 million payment was intended</p> <p>11 to be compensation for Highland's negligent work?</p> <p>12 A Sorry. Can you ask that one more time?</p> <p>13 There was a couple parts there.</p> <p>14 Q No problem.</p> <p>15 Is it fair to say that</p> <p>16 Paragraphs 35 – withdrawn.</p> <p>17 Is it fair to say that Paragraphs 38</p> <p>18 to 45 relate to HCMFA's affirmative defense that</p> <p>19 the \$7.4 million that was transferred from</p> <p>20 Highland to HCMFA in May 2019 was intended to be</p> <p>21 compensation for Highland's negligent work in</p> <p>22 connection with the NAV error and not in the form</p> <p>23 of a loan?</p> <p>24 A You said 38 to 42?</p> <p>25 Q 38 to 45.</p>	<p style="text-align: right;">Page 169</p> <p>1 Dustin Norris</p> <p>2 A 38 to 45.</p> <p>3 Yeah, it – the NAV error items are</p> <p>4 included in there as one of our defenses.</p> <p>5 Q Right.</p> <p>6 A 43 and 44 and 45 discuss additional</p> <p>7 defenses related to the note and who may or may</p> <p>8 not have signed the note and who had authority to</p> <p>9 sign the note.</p> <p>10 Q Okay.</p> <p>11 MR. MORRIS: Can you – can we turn</p> <p>12 to Paragraph 42?</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q Do you see the first four – first few</p> <p>16 words in Paragraph 42 are, quote: "The defendant</p> <p>17 accepted responsibility for the NAV error"?</p> <p>18 A Yes.</p> <p>19 Q Okay. "Defendant" there refers to</p> <p>20 Highland Capital Management, LP; correct?</p> <p>21 A No. I believe –</p> <p>22 Q Oh, I apologize. I apologize.</p> <p>23 A Thank you.</p> <p>24 Q It's HCMFA; right?</p> <p>25 A HCMFA.</p>

<p>Page 170</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And is – did – did HCMFA accept</p> <p>3 responsibility for the NAV error?</p> <p>4 A They did. They – they are the adviser,</p> <p>5 and there's already – in the next sentence, HCMLP</p> <p>6 then accepted that they had a contract with and</p> <p>7 accepted responsibility.</p> <p>8 Q Okay. And so when did the plaintiff</p> <p>9 accept responsibility for having caused the NAV</p> <p>10 error?</p> <p>11 A Again, going back to – this was always</p> <p>12 known and communicated that it was HCMLP</p> <p>13 employees. It was the valuation services they</p> <p>14 were performing. The legal and compliance team</p> <p>15 was all outsourced in the shared services</p> <p>16 agreement.</p> <p>17 And that was – again, there's not a</p> <p>18 singular determination; but Jim Dondero, as</p> <p>19 president, I would say effectuated that with the</p> <p>20 payment of the NAV – for the NAV error.</p> <p>21 Q So you can't tell me when the plaintiff</p> <p>22 accepted responsibility for having caused the NAV</p> <p>23 error; correct?</p> <p>24 A Not a specific date.</p> <p>25 Q Okay. And it's HCMFA's position that Jim</p>	<p>Page 171</p> <p>1 Dustin Norris</p> <p>2 Dondero, in his capacity as the president of</p> <p>3 Highland Capital Management, LP, accepted</p> <p>4 responsibility on behalf of Highland Capital</p> <p>5 Management, LP, for having caused the NAV error?</p> <p>6 A He, and in addition all of the employees</p> <p>7 involved. Right? The valuation team members,</p> <p>8 Frank Waterhouse was CFO, Dave Klos overseeing the</p> <p>9 valuation process, they were all Highland</p> <p>10 employees, and Jim Dondero as well as president</p> <p>11 recognized that based on all the communications</p> <p>12 and conversations they would have had.</p> <p>13 MR. MORRIS: Okay. I'm going to –</p> <p>14 I'm going to move to strike.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q And I'm going to ask you to listen</p> <p>17 carefully to my question.</p> <p>18 Who had the authority to accept, on</p> <p>19 behalf of plaintiff, the responsibility for having</p> <p>20 caused the NAV error?</p> <p>21 A Ultimately Jim Dondero, as president here,</p> <p>22 had that authority.</p> <p>23 Q Okay. And then it says, quote: "The</p> <p>24 plaintiff ultimately, whether through insurance or</p> <p>25 its own funds, compensated the defendant."</p>
<p>Page 172</p> <p>1 Dustin Norris</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q Is that statement accurate?</p> <p>5 MR. RUKAVINA: I'll object to</p> <p>6 vagueness, given the different points in</p> <p>7 time.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q Does HCMFA believe that that statement is</p> <p>10 accurate today?</p> <p>11 A We know now. It's come out in discovery</p> <p>12 that – and it was represented that Mr. Dondero</p> <p>13 transferred money to Highland who transferred it</p> <p>14 to HCMFA. And I don't know – and it says "or,"</p> <p>15 "or its own funds." So it's accurate whether</p> <p>16 through insurance or its own funds.</p> <p>17 But at the time of this writing, we</p> <p>18 didn't have all the details and have firmed up</p> <p>19 those details, and I would refer you to</p> <p>20 depositions and the pleadings and our additional</p> <p>21 statement regarding cash and movement.</p> <p>22 Q Did Highland file an insurance claim, to</p> <p>23 the best of your knowledge?</p> <p>24 A Not that I know of.</p> <p>25 Q Did you ever ask anybody, in preparation</p>	<p>Page 173</p> <p>1 Dustin Norris</p> <p>2 for today's deposition, about that sentence in</p> <p>3 Paragraph 42 and whether or not Highland had ever</p> <p>4 filed an insurance claim?</p> <p>5 A I didn't ask about that sentence, but we</p> <p>6 did discuss whether Highland had filed an</p> <p>7 insurance claim. And to our knowledge, we don't</p> <p>8 know that they have. I'd, again, ask you as their</p> <p>9 attorney. That would be a question for you.</p> <p>10 Q Well, with all due respect, you have</p> <p>11 complete and unfettered access to the former</p> <p>12 president and CFO of Highland; correct?</p> <p>13 A I do, but – I'm sorry. You said</p> <p>14 president and CEO?</p> <p>15 Q The former president and CFO.</p> <p>16 A President and – I don't have unfettered</p> <p>17 access to the former CFO.</p> <p>18 MR. RUKAVINA: I'll – I'll object</p> <p>19 to that. We have been prohibited by</p> <p>20 Waterhouse's attorney from discussing the</p> <p>21 matter with him.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q You're – you're not allowed – did – did</p> <p>24 you – did HCMFA ask Mr. Waterhouse at any time</p> <p>25 whether Highland had filed an insurance claim?</p>

<p>Page 174</p> <p>1 Dustin Norris</p> <p>2 A Not – not that I know of. However, we've</p> <p>3 been not permitted to talk to him related to this,</p> <p>4 based on his attorney. So –</p> <p>5 Q Well, when did –</p> <p>6 A We never really discussed – go ahead.</p> <p>7 Q I'm sorry.</p> <p>8 A Go ahead. You were –</p> <p>9 Q I was just going to ask: When did that</p> <p>10 prohibition go into effect?</p> <p>11 MR. RUKAVINA: John, the witness</p> <p>12 wouldn't know that. It's about three</p> <p>13 months ago that the lady from Baker</p> <p>14 McKenzie, Deb – I don't know her last</p> <p>15 name – got angry at me because I tried to</p> <p>16 talk to Frank and she said, "Absolutely</p> <p>17 not. You're forbidden, and you're</p> <p>18 violating your ethical rules if you do."</p> <p>19 MR. MORRIS: So sometime in</p> <p>20 September?</p> <p>21 MR. RUKAVINA: I would say August</p> <p>22 or September.</p> <p>23 MR. MORRIS: Okay.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q But sometime – but you had – HCMFA had</p>	<p>Page 175</p> <p>1 Dustin Norris</p> <p>2 complete, unfettered access to Mr. Waterhouse from</p> <p>3 the time he left Highland in early March 2021</p> <p>4 until at least the end of July 2021; right?</p> <p>5 A Yeah. And I would add a point to</p> <p>6 Mr. Sauter's declaration and our pleadings and the</p> <p>7 depositions for the various details of what we've</p> <p>8 discovered since. However, the unfettered access</p> <p>9 was also inhibited – or – or Mr. Sauter</p> <p>10 represented this. There was a lot going on in</p> <p>11 March, April, May of 2021.</p> <p>12 Q Yeah.</p> <p>13 A And we were trying to lift out an entire</p> <p>14 business and keep everything afloat, and – as</p> <p>15 you're very aware. And so there was a lot going</p> <p>16 on.</p> <p>17 Q Right. Right.</p> <p>18 Do you see – can we go to</p> <p>19 Paragraph 43, please?</p> <p>20 A Yes.</p> <p>21 MR. MORRIS: If we could just</p> <p>22 scroll down to Paragraph 43, please.</p> <p>23 Thank you.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q Now, again, this amended complaint is</p>
<p>Page 176</p> <p>1 Dustin Norris</p> <p>2 filed is July 2006; correct?</p> <p>3 A July 6th, not July 2006.</p> <p>4 Q I apologize. Let me ask the question</p> <p>5 again.</p> <p>6 This amended answer was filed on</p> <p>7 July 6th, 2021; correct?</p> <p>8 A Correct.</p> <p>9 Q And it was filed after Mr. Sauter</p> <p>10 conducted his investigation to determine the</p> <p>11 circumstances surrounding the note; correct?</p> <p>12 A Uh-huh, correct.</p> <p>13 Q And it was filed after HCMFA had had in</p> <p>14 its possession since January copies of the notes</p> <p>15 that Highland was suing on; correct?</p> <p>16 A Correct.</p> <p>17 Q And it was filed at a time before any</p> <p>18 limitation or prohibition was placed on HCMFA's</p> <p>19 ability to communicate with Mr. Waterhouse since</p> <p>20 the time he had left Highland; correct?</p> <p>21 A Sorry. You want to repeat the first part</p> <p>22 of that?</p> <p>23 Q Sure.</p> <p>24 It was filed at a time after</p> <p>25 Mr. Waterhouse left the employ of Highland but</p>	<p>Page 177</p> <p>1 Dustin Norris</p> <p>2 before there was any limitation or restriction</p> <p>3 imposed on HCMFA's ability to communicate with</p> <p>4 Mr. Waterhouse?</p> <p>5 A Yes. Once he left in March of 2021 is</p> <p>6 when that happened. And, again, in March, we</p> <p>7 were, on both sides, the creation of Skyview, as</p> <p>8 well as our employees, trying as – doing</p> <p>9 everything we could do to transition the</p> <p>10 businesses and services. And so that was an</p> <p>11 important time.</p> <p>12 MR. MORRIS: Okay. Move to strike.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q I just want to confirm that HCMFA had</p> <p>15 unfettered access to Mr. Waterhouse between the</p> <p>16 time he left Highland and the time this amended</p> <p>17 answer was filed in July.</p> <p>18 A We had access to him to ask him what we</p> <p>19 needed. Unfettered in the sense of, "Hey, we can</p> <p>20 access you whenever we need," no, because there</p> <p>21 was a lot involved in launching and – launching</p> <p>22 of Skyview and creating all the services needed</p> <p>23 for our funds since we – HCMFP is sharing</p> <p>24 services provided –</p> <p>25 Q Does Mr. Sauter have a role with HCMFA?</p>

<p style="text-align: right;">Page 178</p> <p>1 Dustin Norris</p> <p>2 A I don't believe so.</p> <p>3 Q Do you know who authorized him to conduct</p> <p>4 this investigation?</p> <p>5 A Yeah. It would have been management,</p> <p>6 Mr. Dondero, and probably our outside counsel. At</p> <p>7 the time, we had been utilizing Highland's</p> <p>8 services as legal services, all the way up until</p> <p>9 the end of February.</p> <p>10 There were legal and compliance</p> <p>11 services that were part of the shared services</p> <p>12 agreement. There was an entire legal team, entire</p> <p>13 team of litigators who were unable to work on</p> <p>14 this.</p> <p>15 Mr. Sauter was a real estate attorney</p> <p>16 for us, and he picked up the slack and was</p> <p>17 assigned by Mr. Dondero to help in these causes</p> <p>18 working with outside counsel, because HCMLP was</p> <p>19 not providing or no longer able to provide those</p> <p>20 legal services based on their – their view, even</p> <p>21 though they were contracted to do those.</p> <p>22 Q That contract ended at the end of</p> <p>23 February; isn't that right?</p> <p>24 A That's correct.</p> <p>25 Q And with the exception of a couple of</p>	<p style="text-align: right;">Page 179</p> <p>1 Dustin Norris</p> <p>2 people, Highland's legal team migrated to Skyview</p> <p>3 in early 2021; is that fair?</p> <p>4 A Yes.</p> <p>5 Q Okay. And among the people who migrated</p> <p>6 were Stephanie Vitiello; correct?</p> <p>7 A Yes.</p> <p>8 Q And Isaac Leventon; correct?</p> <p>9 A Correct.</p> <p>10 Q And he's the chief litigation guy at</p> <p>11 Highland prior to the bankruptcy; right?</p> <p>12 A I – I don't know if that was Isaac or if</p> <p>13 it was Scott Ellington. I don't know.</p> <p>14 Q And Scott – Scott Ellington also</p> <p>15 migrated; right?</p> <p>16 A Correct.</p> <p>17 Q So you had access to those folks for the</p> <p>18 first six months of 2021; right?</p> <p>19 A No. I would – our position is that those</p> <p>20 individuals were unable to work on – even though</p> <p>21 they had left, they were unable to work on</p> <p>22 something of this nature.</p> <p>23 I – I believe there was also a</p> <p>24 preliminary injunction still in place where Jim or</p> <p>25 his employees could not talk to Scott or Isaac. I</p>
<p style="text-align: right;">Page 180</p> <p>1 Dustin Norris</p> <p>2 don't remember all the specific details, but the</p> <p>3 legal team at Highland – or at Skyview was not</p> <p>4 working on this.</p> <p>5 Q Okay.</p> <p>6 A It was probably professional – I don't</p> <p>7 know the standards, but they were unable to work</p> <p>8 on – on this.</p> <p>9 Q All right. But you would agree that at</p> <p>10 the time HCMFA asked the court for permission to</p> <p>11 amend its answer, it did so based on Mr. Sauter's</p> <p>12 investigation; correct?</p> <p>13 A Yes, and I would caveat that subject to</p> <p>14 our – our pleadings.</p> <p>15 Q Right. And I think I moved to strike your</p> <p>16 earlier answer, so let me try and ask the question</p> <p>17 again.</p> <p>18 Did Mr. Dondero authorize Mr. Sauter</p> <p>19 to conduct the investigation?</p> <p>20 A I don't have specific knowledge of that.</p> <p>21 Q All right. I think you used the phrase</p> <p>22 "management." Did management authorize Mr. Sauter</p> <p>23 to conduct this investigation on behalf of HCMFA?</p> <p>24 A I don't know specifically who – who would</p> <p>25 have asked him to do the – Jim and – Jim Dondero</p>	<p style="text-align: right;">Page 181</p> <p>1 Dustin Norris</p> <p>2 asked him to help with the – the legal items, and</p> <p>3 stepped in and help in the absence of HCMLP's</p> <p>4 help.</p> <p>5 Q Okay. And based on that investigation</p> <p>6 looking at Paragraph 43, HCMFA took the position,</p> <p>7 quote: "Waterhouse signed the two promissory</p> <p>8 notes the subject of the complaint," close quote;</p> <p>9 correct?</p> <p>10 A That's right. It's our position that</p> <p>11 at – and I'd refer you to our amended pleading</p> <p>12 with additional information, but it's – it's our</p> <p>13 position that Mr. Waterhouse saw the notes, was</p> <p>14 confronted, discussed with DC, and said, "Look,</p> <p>15 that's my signature. I signed them."</p> <p>16 Q Okay. So that's – and it was on the</p> <p>17 basis of Mr. Waterhouse's conversation with</p> <p>18 Mr. Sauter that HCMFA wrote that sentence; is that</p> <p>19 fair?</p> <p>20 A I believe so. And I would refer you to</p> <p>21 Mr. Sauter's declaration as well, which goes into</p> <p>22 details on that.</p> <p>23 Q And Mr. Sauter specifically said that</p> <p>24 Mr. Waterhouse signed the notes; correct?</p> <p>25 A We can look at Mr. Sauter's declaration.</p>

<p>Page 182</p> <p>1 Dustin Norris</p> <p>2 I – I believe he said he was – Mr. Waterhouse</p> <p>3 told him he signed, but –</p> <p>4 Q Right. And, in fact, HCMFA's position</p> <p>5 throughout this entire case was that</p> <p>6 Mr. Waterhouse signed the notes, but he did so by</p> <p>7 mistake and without authority; correct?</p> <p>8 A That's right. And if you look at the</p> <p>9 depositions, he testified of that, that he didn't</p> <p>10 remember signing them, and he didn't have a</p> <p>11 recollection, and Mr. Dondero never told him to</p> <p>12 sign it, and he never asked him whether – or</p> <p>13 he – Mr. Dondero told him never – told him</p> <p>14 shouldn't be – didn't – Mr. Dondero didn't tell</p> <p>15 him it was a note, and he never asked if it should</p> <p>16 be a note.</p> <p>17 With this – this amended pleading,</p> <p>18 the thought was he mistakenly thought it was a</p> <p>19 note, because that was the practice for other</p> <p>20 notes or other – other transfers of this</p> <p>21 nature – not of this nature, but other transfers</p> <p>22 between companies, and so he had papered it up as</p> <p>23 a note.</p> <p>24 But if you look at the depositions,</p> <p>25 you'll see that additional details came out that</p>	<p>Page 183</p> <p>1 Dustin Norris</p> <p>2 he told his controller, Mr. Klos, to transfer the</p> <p>3 funds, and Mr. Klos then turned around and asked</p> <p>4 Kristin to paper it up as a note, and to transfer</p> <p>5 the cash. And Ms. Hendrix – Kristin Hendrix then</p> <p>6 added Mr. Waterhouse's JPEG signature to the Word</p> <p>7 document, which then was filed away.</p> <p>8 So we – we, through the process of</p> <p>9 depositions and discovery, were able to find more</p> <p>10 information that Frank Waterhouse did not</p> <p>11 remember. He didn't remember signing but said his</p> <p>12 signature is on there, so he must have signed it.</p> <p>13 MR. MORRIS: All right. I move to</p> <p>14 strike. My question is really, really</p> <p>15 simple.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q Up until the time that you filed the</p> <p>18 motion last night, HCMFA's publicly stated</p> <p>19 position has always been that Frank Waterhouse</p> <p>20 signed the notes, and that he did so by mistake</p> <p>21 and without authority; correct?</p> <p>22 A Correct. It says it here:</p> <p>23 "Mr. Waterhouse made a mistake in preparing and</p> <p>24 signing the notes for the defendant."</p> <p>25 Q Okay. Good enough.</p>
<p>Page 184</p> <p>1 Dustin Norris</p> <p>2 A And then it says: "Upon information" –</p> <p>3 Q That's –</p> <p>4 A – "and belief, Waterhouse was not aware</p> <p>5 that the payment from the plaintiff to defendant</p> <p>6 were to compensate the defendant for the NAV</p> <p>7 error."</p> <p>8 Q I'm sorry. Where are you reading from?</p> <p>9 Oh, that's 44?</p> <p>10 A That's in number 44.</p> <p>11 Q Okay.</p> <p>12 A Yeah. "Waterhouse made a mistake in</p> <p>13 preparing and signing the notes for the</p> <p>14 defendant."</p> <p>15 Q Right. Okay.</p> <p>16 A But, again, I'll refer you to the</p> <p>17 depositions and the evidence –</p> <p>18 MR. MORRIS: Move to strike. It's</p> <p>19 not responsive to my question.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q Do you see in Paragraph 47 there's a</p> <p>22 reference to "lack of consideration"?</p> <p>23 A Yes.</p> <p>24 Q Okay. What does that mean?</p> <p>25 A My understanding is that there was no</p>	<p>Page 185</p> <p>1 Dustin Norris</p> <p>2 consideration. We – there were notes, but there</p> <p>3 was no payment for those notes. The payment was</p> <p>4 for compensation related to the NAV error, so</p> <p>5 there was no payment – or no compensation for</p> <p>6 notes that had been drafted.</p> <p>7 Q Okay. And the next defense there in</p> <p>8 Paragraph 47 is "mutual mistake."</p> <p>9 Do you see that?</p> <p>10 A Correct.</p> <p>11 Q Do you have any facts that support that,</p> <p>12 that the mistake was mutual?</p> <p>13 A Yeah. I – I would look to the</p> <p>14 depositions. And if you go to the testimony of</p> <p>15 Frank and Jim Dondero and David Klos and Kristin,</p> <p>16 it was a clear path and a clear record of mutual</p> <p>17 mistake.</p> <p>18 Jim told Frank to transfer the money</p> <p>19 for the NAV error. Frank then goes, tells</p> <p>20 Mr. Klos, the controller, to go and transfer the</p> <p>21 money, who tells Kristin to transfer the money –</p> <p>22 or to make the transfer and to paper it up.</p> <p>23 Kristin then papers it up, following the process</p> <p>24 that she's always followed or she said she's</p> <p>25 followed for many other notes.</p>

<p>Page 186</p> <p>1 Dustin Norris</p> <p>2 She lacked the authority to do so.</p> <p>3 Mr. Klos lacked the authority. Mr. Waterhouse was</p> <p>4 never told to make a note, and so the note itself</p> <p>5 is drafted by an accountant without authority to</p> <p>6 do so with a maker and a counterparty that is on</p> <p>7 both sides of this, representing supposedly both</p> <p>8 sides.</p> <p>9 And our position is that the maker of</p> <p>10 this – even if you look at the document, Frank</p> <p>11 Waterhouse signs as maker, not as his position.</p> <p>12 He's signing as the maker.</p> <p>13 And so there's various aspects of this</p> <p>14 that had errors on both sides, the – the position</p> <p>15 of HCMFA where they thought they had authority and</p> <p>16 the position of HCMLP.</p> <p>17 Q Anything else, sir?</p> <p>18 A I – I would refer you to the – again,</p> <p>19 the depositions and our pleadings. But there's –</p> <p>20 there's a host of support there.</p> <p>21 Q Other than the deposition transcripts and</p> <p>22 the – and HCMFA's pleadings, are you aware of any</p> <p>23 document anywhere in the world that corroborates</p> <p>24 the defense of mutual mistake?</p> <p>25 A Other than the documents, the pleadings,</p>	<p>Page 187</p> <p>1 Dustin Norris</p> <p>2 and any schedules and other forms that are filed</p> <p>3 with the court, there's – there's plenty there.</p> <p>4 Q Okay. What schedules are you referring</p> <p>5 to?</p> <p>6 A I would say all of your supporting</p> <p>7 schedules, all of your documentation, the notes</p> <p>8 themselves, the – the Word documents that we</p> <p>9 received as well in discovery that have the</p> <p>10 metadata showing that Kristin Hendrix applied</p> <p>11 Frank Waterhouse's JPEG signature.</p> <p>12 Q Okay.</p> <p>13 A All of those items as well as, again,</p> <p>14 depositions all – of all those individuals.</p> <p>15 Q So – so I just want to make sure that I</p> <p>16 have this clear.</p> <p>17 So you've got the JPEG documents.</p> <p>18 You've got the deposition transcripts. You know</p> <p>19 what? Let me restate the question.</p> <p>20 You've identified the JPEG documents.</p> <p>21 Other than the JPEG documents, are you aware of</p> <p>22 any document in the world that was created before</p> <p>23 the answer date that supports or corroborates the</p> <p>24 defense of mutual mistake?</p> <p>25 A I'm – again, I – I'd point to the –</p>
<p>Page 188</p> <p>1 Dustin Norris</p> <p>2 let – let me take a look here again.</p> <p>3 Q What is it you're looking at?</p> <p>4 A This is the amended complaint.</p> <p>5 Q Okay.</p> <p>6 A Which paragraph was that again?</p> <p>7 Q It's 47.</p> <p>8 A 47.</p> <p>9 Q Yeah. There's – it's a – there's –</p> <p>10 A Mutual mistake.</p> <p>11 Q – one of the defenses there. It's up on</p> <p>12 the screen.</p> <p>13 A Yeah.</p> <p>14 Q There's "mutual mistake," and I just want</p> <p>15 you to identify for me every document that HCMFA</p> <p>16 is aware of that was created before the answer</p> <p>17 date of March 1st, 2001 [sic], other than the JPEG</p> <p>18 documents –</p> <p>19 A I would – I would refer you to –</p> <p>20 Q – that support or corroborate – that</p> <p>21 support or corroborate the defense of mutual</p> <p>22 mistake?</p> <p>23 A Yeah. And I'd also point you to DC</p> <p>24 Sauter's declaration.</p> <p>25 Q Okay. That wasn't created before the</p>	<p>Page 189</p> <p>1 Dustin Norris</p> <p>2 answer date; correct?</p> <p>3 A Well, you're saying – you – it was</p> <p>4 before the answer date.</p> <p>5 Q Pardon me?</p> <p>6 A The answer date being when we did the</p> <p>7 amended answer?</p> <p>8 Q No. Let me ask the question again.</p> <p>9 A Yes, please. Sorry.</p> <p>10 Q Can you identify any document in the</p> <p>11 world, other than the JPEG documents, that support</p> <p>12 or corroborate the defense of mutual mistake that</p> <p>13 was created before March 1st, 2021?</p> <p>14 A I got you.</p> <p>15 The JPEG documents is the Word</p> <p>16 documents with the metadata.</p> <p>17 Q Correct.</p> <p>18 A There were emails that went between the</p> <p>19 accounting team on how to paper it up. That is in</p> <p>20 your – your documentation as well, and I would</p> <p>21 say any other document that's in the court</p> <p>22 filings.</p> <p>23 Q Can you identify them? That's kind of –</p> <p>24 that's not really helpful to me.</p> <p>25 A Yeah. I – there's the – there's an</p>

<p>Page 190</p> <p>1 Dustin Norris</p> <p>2 email – and this was used in depositions.</p> <p>3 There's an email that went – was David Klos</p> <p>4 instructing the group – or instructing Kristin to</p> <p>5 send the cash and to record a note.</p> <p>6 Q And you believe that – and it's HCMFA's</p> <p>7 contention that that document supports their</p> <p>8 position of mutual mistake. Do I have that right?</p> <p>9 A Again, I'm not an attorney, so tying the</p> <p>10 definition as little M, little M, I'm going to</p> <p>11 have to say I don't know.</p> <p>12 Q Okay. Other than the emails, the two</p> <p>13 emails that you referenced and the JPEG documents,</p> <p>14 can you identify any other document created before</p> <p>15 May 1st – March 1st, 2021, that supports or</p> <p>16 corroborates the defense of mutual mistake?</p> <p>17 A There may be a document. I – I don't</p> <p>18 know.</p> <p>19 Q Okay.</p> <p>20 A And, again, as you've seen, there's a lot</p> <p>21 of stuff that's come out in discovery, and it's</p> <p>22 important that testimony of – of those witnesses</p> <p>23 is taken into account.</p> <p>24 MR. MORRIS: Okay. Move to strike</p> <p>25 the last portion of that answer.</p>	<p>Page 191</p> <p>1 Dustin Norris</p> <p>2 Let's take a short break. I may be</p> <p>3 done. It's 4:09. Can we just come back</p> <p>4 in six minutes?</p> <p>5 THE WITNESS: Yes. Thank you.</p> <p>6 MR. RUKAVINA: Sure.</p> <p>7 MR. MORRIS: Thank you.</p> <p>8 (Recess from 3:09 p.m. to 3:19 p.m. CST)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Just a couple more questions, Mr. Norris.</p> <p>11 If you can take a look again at</p> <p>12 Paragraph 47 of the amended answer.</p> <p>13 A Yes.</p> <p>14 Q Do you see there's also a reference to,</p> <p>15 quote, "the lack of authority from the defendant</p> <p>16 to Waterhouse," close quote?</p> <p>17 A Yes.</p> <p>18 Q HCMFA does not dispute that Mr. Waterhouse</p> <p>19 was an officer of HCMFA in May of 2019, does it?</p> <p>20 A No, we don't dispute that.</p> <p>21 Q And HCMFA doesn't dispute that</p> <p>22 Mr. Waterhouse, in fact, served as the treasurer</p> <p>23 of HCMFA in May 2019; correct?</p> <p>24 A We don't, no.</p> <p>25 Q Okay. Is the sole basis for the assertion</p>
<p>Page 192</p> <p>1 Dustin Norris</p> <p>2 that Mr. Waterhouse lacked authority was that</p> <p>3 Mr. Dondero did not specifically approve it?</p> <p>4 A By nature, just the size of this note and</p> <p>5 the nature of it would have required Mr. Dondero's</p> <p>6 authority. And both Mr. Waterhouse and</p> <p>7 Mr. Dondero testified to that in their deposition.</p> <p>8 So I'd refer you to that. They both testified he</p> <p>9 did not have the authority.</p> <p>10 MR. MORRIS: I'm not sure that he</p> <p>11 did, so I'm going to move to strike. The</p> <p>12 testimony will be what the testimony will</p> <p>13 be, not your characterization of it.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q But what about the size of the notes</p> <p>16 causes HCMFA to contend that Mr. Waterhouse didn't</p> <p>17 have authority?</p> <p>18 A A seven and a half million dollar note is</p> <p>19 large enough to rise that Jim Dondero would have,</p> <p>20 in any instance, authorized or needed to authorize</p> <p>21 this, and he did not.</p> <p>22 Q And is that because a \$7.4 million note is</p> <p>23 a substantial obligation for HCMFA?</p> <p>24 A You know, substantial – define</p> <p>25 "substantial." It's sizeable. Right? It's seven</p>	<p>Page 193</p> <p>1 Dustin Norris</p> <p>2 and a half million dollars. Overall from the</p> <p>3 operating business, it was meaningful. But seven</p> <p>4 and a half million dollars in any entity would</p> <p>5 have required Jim Dondero's approval.</p> <p>6 Q And so can you explain to me why, if it</p> <p>7 would have required his approval, nobody at HCMFA</p> <p>8 noticed that it was carried on HCMFA's books and</p> <p>9 records as a liability since May of 2019?</p> <p>10 A Yeah. I think it's a simple mistake.</p> <p>11 There were other notes of a similar nature in</p> <p>12 size. And as Mr. Dondero testified, he wasn't</p> <p>13 reviewing these regularly, the balance sheet.</p> <p>14 Frank Waterhouse was. The accounting team was.</p> <p>15 And so the HCMFA side, there was other notes of</p> <p>16 similar size and nature. It didn't occur to them</p> <p>17 that there was new notes. The accounting team, as</p> <p>18 we've – which is our position, created the notes,</p> <p>19 added the signature of Mr. Waterhouse, and then</p> <p>20 they continued to record those as liabilities on</p> <p>21 the balance sheet. And –</p> <p>22 Q Is –</p> <p>23 A – that was – you had – and, again, I'd</p> <p>24 refer you to our pleadings and our amended</p> <p>25 pleadings and the recent pleading yesterday that</p>

<p>Page 194</p> <p>1 Dustin Norris</p> <p>2 we discovered in the discovery process. But</p> <p>3 Kristin Hendrix and Dave Klos and Frank Waterhouse</p> <p>4 made it very clear what the process – and I would</p> <p>5 say why – in answer to your question, it was</p> <p>6 probably a little sloppy. It may have cut</p> <p>7 corners. They should have received Mr. Dondero's</p> <p>8 authorization, and they didn't. And so</p> <p>9 that's – that's our position.</p> <p>10 Q Does –</p> <p>11 A And I would say these are all</p> <p>12 professionals. These are good people. I don't</p> <p>13 think they were dishonest. I think they made a</p> <p>14 mistake. Professionals make mistakes, but this</p> <p>15 was a costly mistake.</p> <p>16 Q Did – does – does HCMFA contest that</p> <p>17 Frank Waterhouse knew, on May 2nd and May 3rd,</p> <p>18 2019, that the corporate accounting group was</p> <p>19 going to paper these transactions as loans?</p> <p>20 A Again, I would refer you to the actual</p> <p>21 depositions and pleadings – and our pleadings.</p> <p>22 But our position is – sorry. One more time, do</p> <p>23 you want to ask the question?</p> <p>24 Q Yeah. I think you need to – I want to</p> <p>25 try to finish up, and I really appreciate your</p>	<p>Page 195</p> <p>1 Dustin Norris</p> <p>2 patience.</p> <p>3 MR. RUKAVINA: And I'll just say,</p> <p>4 John, that was a bit of a confusing</p> <p>5 question.</p> <p>6 MR. MORRIS: Okay. And that's</p> <p>7 fair. Let me try again.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q Does HCMFA contest that Frank Waterhouse</p> <p>10 knew, on May 2nd and May 3rd, 2019, that the</p> <p>11 corporate accounting group was going to paper the</p> <p>12 transfers from Highland as loans?</p> <p>13 A Did we contest that he knew that?</p> <p>14 Q Correct.</p> <p>15 A I think his testimony speaks – I'll refer</p> <p>16 you to his testimony. I think he testified that</p> <p>17 he didn't know, right? He didn't know that</p> <p>18 they – yes, he was copied on an email, but he</p> <p>19 didn't have any recollection that they were</p> <p>20 papered up as a loan.</p> <p>21 Q Okay. And on the basis of that testimony,</p> <p>22 does HCMFA now contend that Mr. Waterhouse didn't</p> <p>23 know, in May of 2019, that these transfers were</p> <p>24 papered as loans?</p> <p>25 A I would say that's part of it. I would,</p>
<p>Page 196</p> <p>1 Dustin Norris</p> <p>2 again, refer you to all the pleadings, our</p> <p>3 pleadings and depositions that – of these</p> <p>4 individuals. There's – there's a lot of support</p> <p>5 there.</p> <p>6 Q Right.</p> <p>7 Have you seen the emails from May 2nd</p> <p>8 and May 3rd?</p> <p>9 A I can't remember if they were included in</p> <p>10 your exhibits, but I know they were discussed in</p> <p>11 detail in the depositions from Dave Klos and</p> <p>12 Kristin and Frank.</p> <p>13 Q Right. Okay.</p> <p>14 MR. MORRIS: I have no further</p> <p>15 questions. This is not particularly</p> <p>16 helpful. Thanks.</p> <p>17 MR. RUKAVINA: Okay. I'll reserve</p> <p>18 questions. Thank you.</p> <p>19 MR. MORRIS: Okay. Thanks a lot.</p> <p>20 MR. RUKAVINA: Thank you.</p> <p>21 (Off the record at 3:25 p.m. CST)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 197</p> <p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 In re:)Chapter 11</p> <p>5)</p> <p>6 HIGHLAND CAPITAL MANAGEMENT, LP,)</p> <p>7)Case No.</p> <p>8 Debtor.)19-34054-SGJ-11</p> <p>9)</p> <p>10 HIGHLAND CAPITAL MANAGEMENT, LP,)</p> <p>11)</p> <p>12 Plaintiff,)</p> <p>13)</p> <p>14 vs.)Advisory Proceeding No.</p> <p>15)21-03004</p> <p>16 NEXPOINT ADVISORS, LP; JAMES)</p> <p>17 DONDERO; NANCY DONDERO; and THE)</p> <p>18 DUGABOY INVESTMENT TRUST,)</p> <p>19)</p> <p>20 Defendants.)</p> <p>21)</p> <p>22</p> <p>23 REPORTER'S CERTIFICATION</p> <p>24 REMOTE DEPOSITION OF</p> <p>25 DUSTIN NORRIS</p> <p>December 1, 2021</p> <p>I, Rebecca A. Graziano, Certified Shorthand</p> <p>Reporter in and for the State of Texas, hereby</p> <p>certify to the following:</p> <p>That the witness, DUSTIN NORRIS, was duly</p> <p>sworn and that the transcript of the oral</p> <p>deposition is a true record of the testimony given</p> <p>by the witness;</p> <p>I further certify that pursuant to FRCP Rule</p> <p>30(f)(1) that the signature of the deponent:</p> <p>_____ was requested by the deponent or a</p> <p>party before the completion of the deposition and</p>

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1 returned within 30 days from date of receipt of
 2 the transcript. If returned, the attached Changes
 3 and Signature Page contains any changes and the
 4 reasons therefor.
 5 _____ was not requested by the deponent or a
 6 party before the completion of the deposition.
 7 I further certify that I am neither attorney
 8 nor counsel for, related to, nor employed by any
 9 of the parties to the action in which this
 10 testimony was taken.
 11 Further, I am not a relative or employee of
 12 any attorney of record in this cause, nor do I
 13 have a financial interest in the action.
 14 Subscribed and sworn to on this 1st day of
 15 December, 2021.

16
 17
 18
 19
 20 _____
 21 Rebecca A. Graziano, CSR, RMR, CRR
 22 Texas CSR 9306
 23 Expiration: 07/31/22
 24 California CSR 14407
 25 Expiration: 09/30/22
 Illinois CSR 084.004659
 Expiration: 05/31/23

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2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg. No. Now Reads Should Read Reason

6	_____	_____	_____
7	_____	_____	_____
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16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____

20
 21 _____
 22 Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

23 THIS ____ DAY OF _____, 2021.

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____

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